# The Employed Professional

**Prepared by**
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**for**
**The Professional Organizations Committee**

KF 2900 A73 W67 no.13 c.1
Swinton, Katherine.
The employed professional

no. 13
c. 1

Working Paper
#13

# THE EMPLOYED PROFESSIONAL

A Working Paper Prepared by

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for

The Professional Organizations Committee

1979

ISBN 0-7743-3447-9

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Note: Janet Yale was responsible for the preparation of Chapter II, "The Employed Professional: A Description".

# CHAPTER I

## INTRODUCTION

This study focusses on the "employed professional" in the four professions of accounting, architecture, engineering, and law. Such individuals are to be found working in governments, industry, and professional firms, sometimes doing the traditional work of their profession and at other times performing administrative and managerial tasks necessary to the operations of the organization employing them. It is the purpose of this study to identify problems which such professionals, while working in their profession, may have arising out of their employee status. As well, it will try to determine problems which may confront their employers or the professional association by which they are licensed because of the combination of employment and professional status.

The need to study "employed professionals" as an interest group separate from their self-employed counterparts arises from the apparent conflict existing between professionalism and bureaucracy. This conflict has been discussed in depth in other studies and requires only brief description here.[1] Of necessity, in describing this apparent conflict, one must begin by setting out definitions of both "professionalism" and "bureaucracy", a task which is far from easy. Essentially, a profession is an

occupation in which the practitioner possesses a body of specialized or technical knowledge, usually acquired through a lengthy educational process. Traditionally, in professions such as law or medicine, this knowledge has been employed in giving service to individual clients, who have relied on the expertise in decision-making in a particular field which the professional possesses. As a result, an ideal of service to the client or the wider community developed as an attribute of professionalism. Aligned to this service ideal is the characteristic of autonomy, an outgrowth of both the expertise of the professional and the structure of a practice with many clients. This autonomy has traditionally been regarded as the most important attribute of the professional. The client, unable to evaluate critically the professional's decisions, must rely on the professional's expertise.[2]

In contrast to the attributes of individual responsibility and autonomy which are thought to constitute professionalism are the characteristics traditionally associated with bureaucracy. With bureaucratic organization come standardization and simplification of procedures, as complex tasks are broken down into routinized and simplified tasks in the hierarchy. Service to the organization and its goals takes priority over service to outside interests such as the wider community. Emphasis is on hierarchical authority with control of individual discretion

and autonomy following from the goal of protecting the organization's needs.

While some commentators would argue that "professionalism" is incompatible with bureaucracy because of the element of control, this conclusion is unrealistic, as increasing numbers of professionals are employed in bureaucratic organizations.[3] Rather than focus on rigid definitions of professionalism and bureaucracy, the concern should be the potential for conflict between the interests in autonomy of the professional and the organizational interests of the bureaucracy. The liberty of having final or exclusive responsibility for the approach to his work, which the prototypical professional enjoys and which the individual professional is socialized in his education to expect, may be lost in the large organization. Specialization and division of tasks and a hierarchy of authority will often replace individual decision-making.

The degree of conflict which an individual professional experiences in the bureaucracy will obviously vary from one enterprise to another, depending upon the particular organization and the nature of the professional task. In an organization with a large percentage of professional employees, there would seem to be more likelihood of awareness of the professional's concerns and efforts by the organization to adapt to

meet them. Similarly, where the professional task is one important to the success of the enterprise or where there is a scarcity of those with particular skills, there may be more room for harmonizing professionalism with bureaucracy because of the implicit bargaining power of the professional employee.[4]

Inevitably there are problems facing the professional who is an employee that arise with neither the same immediacy nor with the same frequency for his self-employed counterpart. These problems may involve lack of recognition of his professional status, conflicts between his employer's demands and the Code of Ethics of his profession, lack of opportunity to exercise his professional judgment, or insufficient financial compensation compared to other professionals. For his employer, too, there may be problems in employing professional staff that do not arise with his other employees - problems in assigning work in light of the unauthorized practice rules of the regulatory bodies of the various professions and difficulty in evaluating the work of professional employees and in maintaining their morale. Finally, the regulatory bodies for the professions may experience problems specific to employed or salaried members that do not arise with self-employed members, such as deciding the scope and method of policing "unauthorized practice" and the approach to take to the problem of continuing competence when employed professionals

move to private practice.

This paper will study some of these problems facing salaried professionals, their employers, and the regulatory body responsible for licensing these employees. In light of that general discussion, various alternatives will be discussed, as ways of redressing the problems that exist: collective bargaining; exemption from licensing for employed professionals; restructuring the regulatory bodies; and establishment of new interest groups to represent employed professionals.

Before proceeding, two preliminary matters warrant discussion to place this study in context. First is another of the perennial definitional problems that accompany any study and that is to decide who falls within the designation of "employed professional". Professionals are employed in industry and government; clearly they fall within the field of interest. Yet professionals are also employed within professional firms - in the offices of lawyers, chartered accountants, architects, and consulting engineers. Some of the problems facing each type of employee will be the same; for example, in economic matters, both groups may feel that they are insufficiently remunerated. In general, however, the scope of their problems will differ. The employee in the professional firm works with and is answerable to other professionals, rather than to a corporate

or government hierarchy. Generally he will perceive himself as a future partner or self-employed professional, rather than as an employee. At most, he will regard his employee status as temporary and transitional. In addition, he is less likely to experience the status and ethical problems which may face the employee in a large corporate or government bureaucracy, since he works for those with similar training and outlook.[5] As a result, he is less likely to adopt some of the measures discussed later which are designed to meet the needs of the professional employee, particularly collective bargaining.

Because of these differences between the two types of professional employees, this study will focus on the professional who works for a corporation or in a government department. Some of the discussion will be relevant to the situation of an employee in a professional firm, and this will be indicated when appropriate. Otherwise, the discussion is focused on those employed in the profession, but not in a professional firm.

Aside from the problem of defining <u>which</u> professional employees to study, a further definitional problem arises out of the concept of "employee". Should one consider the interests of salaried professionals only if those individuals are without supervisory authority or managerial responsibilities? In effect, the question is whether the study should draw distinctions somewhat along the lines set out in labour relations

legislation, which exclude those exercising managerial functions.[6] The alternative is to consider the problems of all salaried professionals in government and industry. The executive vice-president of a large manufacturing establishment may be a professional engineer. He is clearly an employee, in the sense of being salaried, but some of his concerns are likely to differ from those of an engineer employed in a research capacity in a company laboratory. The range of those who could be designated "employees" is a broad one. At this point, it would be detrimental to the study to try to exclude "management"-type employees. Even if it were possible to devise a workable definition to determine those to be excluded, such an approach would opt for the status quo in labour relations legislation as the appropriate way to regulate employed professionals. The acceptability of that approach remains to be seen.

A final introductory matter which must be addressed briefly is the rationale for self-regulation of professions, since the employed professionals who form the subject of this study are licensed by various self-regulatory professional bodies. According to Tuohy and Wolfson, self-regulation is the result of an agency relationship established by the state with a particular profession. This conferral of occupational self-government comes about because the perceived benefits of self-regulation outweigh the costs of giving this monopoly over practice. The

profession has the specialized knowledge necessary to evaluate qualifications and standards of its members. Furthermore, it can monitor individual practices more easily than can the state, both through the use of its expertise and through inculcating allegiance to group norms in its members.[7] Theoretically, the power of self-regulation is conferred because it is in the public interest to do so, the state having perceived the need for regulation of the professional group because individual consumers, lacking the information and expertise to evaluate the services of the professionals, cannot regulate them through the marketplace.[8]

These information and evaluation problems usually result from the intermittent nature of the relationship between professional and client. The question arises as to whether the oversight of regulatory bodies is still necessary for employed professionals, who serve only one client - the corporation, government or professional firm by which they are employed. The access which such "clients" have to information with regard to the quality of the service received and their ability to evaluate this service over the continued period of the working relationship is likely to exceed that of an individual client.

Even if such clients do not need the protection of the regulatory regime, the question arises as to whether the "public

interest" requires continued oversight by the regulatory regime. It is arguable that market pressures on corporations or political checks on governments are sufficient to spur an employer to monitor the work of his professional employees and to ensure that the public interest is adequately safeguarded, thus removing the need for regulation by professional bodies. This argument will be explored in more depth in Chapter IV of this paper. It is raised at this point only to alert the reader to methods alternative to self-regulation which may be available to regulate professional conduct in the public interest.

The remainder of this paper focuses on the situation of the employed professional. Chapter II presents economic data on the numbers of employed professionals, their place of employment, salary, age, and place of education. Chapter III describes the present concerns of the employed professionals, their employers, and their regulatory bodies when dealing with employed professionals. In Chapter IV, alternative methods of addressing these concerns are discussed: specifically, collective bargaining, licensing exemptions, changes in the regulatory bodies, and development of new organizations for employed professionals. Present applications of these alternatives in the various professions will be discussed, as well as their feasibility if they were made generally available in the professions. Chapter V

provides a summary with recommendations as to the way in which employed professionals in the professions under study should be regulated.

## NOTES - CHAPTER I

1. See, for example, E. Morissey and D. Gillespie, Technology and the Conflict of Professionals in Bureaucratic Organizations (1975), 16 Sociological Quarterly 319; H.L. Wilensky, The Professionalization of Everyone? (1964-65), 70 American Journal of Sociology 137; G. Adams, "Collective Bargaining by Salaried Professionals" in M. Trebilcock and P. Slayton, eds. The Professions and Public Policy (Toronto: University of Toronto Press, 1978) at 264 ; Quebec Office des Professions, The Evolution of Professionalism in Quebec (1976) at 26-27; R. H. Hall, Professionalization and Bureaucratization (1968), 33 American Sociological Review 92.

2. C. Tuohy and A. Wolfson in "Self-Regulation: Who Qualifies?" in Trebilcock and Slayton, supra, note 1, p.111, conclude that the agency relationship developed between the professional and the consumer of his services is the essence of professionalism (at 113).

   Other attributes could be said to be associated with professionalism, such as self-regulation by the professional group conferred with the social and legal approval of the general community. This self-regulation tends to be derivative from the earlier attributes mentioned, such as specialized knowledge, and not necessarily a distinguishing characteristic of a profession. (See, Office des Professions, supra, note 1 at 22).

3. See Chapter II, infra and M. Gunderson, "Economic Aspects of the Unionization of Salaried Professionals" in Trebilcock and Slayton, supra, note 1, at 247.

   The Office des Professions in Quebec has noted, in its effort to define professionalism, that

   > "Private practice has been replaced as an indicator of professional autonomy by the condition of being independent in carrying out one's tasks." (Supra, note 1 at 27).

   Thus,"professionalism" and "bureaucracy" are not incompatible. Wilensky (supra, note 1) says that occupational groups in

the future will mix elements of the professional and bureaucratic models (at 158).

4. See Wilensky, supra, note 1 at 147-148; Morissey and Gillespie, supra, note 1 at 330.

5. Still, one cannot realistically deny that some employees in large-scale professional firms will also experience problems with bureaucracy and the necessity to subordinate individual judgment to organizational policy. See, for example, E. Smigel, The Wall Street Lawyer: Professional Organization Man? (Bloomington: Indiana University Press, 1964) at 293, 296.

6. See discussion, infra, chapter 4 at p. 107.

7. Tuohy and Wolfson, supra, note 4 at 116.

8. Id. at 12. See also, Government of Ontario, Royal Commission of Inquiry into Civil Rights, Report, No. 1, Vol. 3 (the McRuer Commission) (Ontario: Queen's Printer, 1968) 1162, 1166.

# CHAPTER II

## THE EMPLOYED PROFESSIONAL: A DESCRIPTION

### 1. INTRODUCTION

The purpose of this chapter is to describe the population of Ontario lawyers, architects, and engineers with respect to a variety of characteristics including years of experience, place of training, place of birth, source of income, and employment setting, and to examine the effect of these factors on professional earnings. Accountants are not included in this description because the necessary information was not available with regard to their profession, as explained below.

The data presented in these pages were obtained from the Highly Qualified Manpower (HQM) Survey, a Canada-wide survey of individuals with university degrees conducted in 1973. A special file was established for the Professional Organizations Committee from that data base. The criteria for entry into the Professional Organizations Committee sample were a university degree in law, architecture or engineering, Ontario residency, and full-time employment (worked forty weeks per year or more). Optimally one would have liked the sample to comprise those registered

with one of the three relevant licensing bodies; however, that information was not obtained from the survey. Since a university degree in the field is a prerequisite to becoming registered in law, architecture, or engineering, it was decided that this qualification would be a suitable proxy for a professional designation. A profile of accountants could not be similarly derived from the HQM data since entry requirements into that profession do not include a university degree specifically related to the profession. While public accountants must at present have a university degree and completion of 45 credit hours in required university courses, the degree held might be a Bachelor of Commerce, a Bachelor of Arts, or a Masters in Business Administration. Prior to 1971, possession of a university degree was not a qualification for entry into public accounting. Thus, one cannot draw inferences with regard to those engaged in the profession of accounting from the possession of a particular university degree in the way in which one can for those possessing a Bachelor's degree in Engineering, Law, or Architecture.

The occupation of the respondent was not used as the criterion for determining professional identity because this would have eliminated from the sample many professionals (especially in engineering) who are working in related occupations and are

still utilizing their professional training. In terms of this study, the examination of factors influencing the earnings of professionals must include consideration of the effect of alternative occupational contexts. Similarly, rather than selecting on the basis of last highest earned qualification, all those who at some time earned a degree in engineering, architecture or law were included in the sample. Although there may be a few individuals included in the sample who are in fact involved in unrelated occupations owing to these definitions, the likelihood of any significant bias in the results is small.

Finally, with respect to requiring full-time employment for eligibility in the sample, it should be noted that earnings data cannot be meaningfully compared without controlling for the number of hours worked in a given time period. It should also be noted that income data is not reported in the tables for those cells in which there are less than one hundred professionals owing to the possibility of response bias.

## 2. LAWYERS

Of the 8,560 individuals with degrees in law, 6,643 (78%) were working full-time. Unfortunately, a further 1,532 were eliminated from the sample because they did not report income, leaving a final group of 5,112.

Table 1 examines the effect of several variables on the earnings of lawyers: years of experience, source of income (salary/self-employed), employment setting (public/private sector). Extrapolating from the cross-sectional income data to form an earnings profile, it is clear that "years of experience" is an important determinant of a lawyer's earnings. Income differentials between experience levels are significant especially at the lower end of the experience spectrum; however, earnings peak in the 10 to 19 years of experience category, declining slightly for those with twenty years of experience or more. At the time of the survey, the distribution by years of experience of the lawyer population was weighted towards the more experienced groups. It should be noted that the influx of young lawyers in the last few years has changed this distribution significantly. Although the distribution by years of experience is dated, it is reasonable to suppose that the income relationships just described continue to apply.

Taking into account source of income as well as years of experience in examining earnings, it appears that incomes of self-employed lawyers are higher than those of salaried lawyers with comparable years of experience, the income differentials between the two groups increasing with years of experience except in the highest experience category. The earnings profiles of the two groups differ significantly: the incomes of the self-

employed increase much more quickly than those of the salaried lawyers; however, self-employment income peaks and then declines while salaries increase steadily with years of experience.

The data indicate relatively few self-employed lawyers at the two lower experience levels, while in the other three experience categories the self-employed lawyers comprise at least 50% of their experience groups. The increasing number of lawyers with less than five years of experience should affect the distribution of lawyers by source of income in the lower experience categories. As salaried positions become scarce, it can be expected that younger lawyers will be forced to start their own practices, thereby increasing the proportion of self-employed lawyers.

Finally, salaried lawyers were segmented by sector of employment, that is, government or private industry. Lawyers employed in the public sector earn less than their counterparts (by experience level) in private industry, this differential increasing with years of experience. At the time of the survey, the lawyers employed by government were concentrated at the upper experience levels, while lawyers employed in private industry were found primarily in the lower experience categories.

TABLE 1

| | | Number of Lawyers | $ Average Income* |
|---|---|---|---|
| 1. | Up to 2 years experience | 584 | 8,482* |
| | a. Salaried | 538 | 7,604* |
| | i) Public Sector | 29 | - |
| | ii) Private Sector | 509 | 7,448* |
| | b. Self-Employed | 16 | - |
| 2. | 3 to 5 years experience | 917 | 15,830 |
| | a. Salaried | 610 | 15,493 |
| | i) Public Sector | 88 | - |
| | ii) Private Sector | 522 | 15,385 |
| | b. Self-Employed | 308 | 16,498 |
| 3. | 6 to 9 years experience | 949 | 24,333 |
| | a. Salaried | 449 | 20,894 |
| | i) Public Sector | 111 | 19,792 |
| | ii) Private Sector | 338 | 21,257 |
| | b. Self-Employed | 499 | 27,429 |
| 4. | 10 to 19 years experience | 1491 | 36,981 |
| | a. Salaried | 457 | 25,840 |
| | i) Public Sector | 204 | 24,380 |
| | ii) Private Sector | 253 | 27,019 |
| | b. Self-Employed | 1034 | 41,907 |
| 5. | 20 years + experience | 1201 | 36,524 |
| | a. Salaried | 554 | 31,642 |
| | i) Public Sector | 382 | 28,822 |
| | ii) Private Sector | 172 | 37,892 |
| | b. Self-Employed | 647 | 40,705 |

* Income figures may be somewhat depressed owing to the inclusion of articling students.

In Table 2, the population of Ontario lawyers is broken down by place of birth: it is clear that the vast majority of lawyers were born in Canada. Average income for this group is somewhat higher than for those born outside Canada; this differential being largely comprised of higher returns to self-employment for those born in Canada.

TABLE 2

| | | Number of Lawyers | $ Average Income |
|---|---|---|---|
| 1. | Born in Canada | 4554 | 28,007 |
| | a. Salaried | 2311 | 20,152 |
| | i) Public Sector | 746 | 24,698 |
| | ii) Private Sector | 1565 | 17,986 |
| | b. Self-Employed | 2243 | 36,098 |
| 2. | Born Outside Canada | 557 | 24,664 |
| | a. Salaried | 297 | 19,171 |
| | i) Public Sector | 68 | 21,676 |
| | ii) Private Sector | 229 | 18,427 |
| | b. Self-Employed | 260 | 30,932 |

The next table indicates that distribution and average income of lawyers with respect to place of training. As distinguished from the architects and engineers, lawyers trained outside Canada are not eligible to practise in Ontario without additional

university training in Canada, hence only two place of training alternatives. As seen in Table 3, a minority of Ontario lawyers have received their training outside Ontario. In addition, relatively more of those trained outside Ontario are salaried than is the case for Ontario trained lawyers. It appears that those trained in Ontario earn somewhat more than those trained elsewhere in Canada; however, the differential is reduced substantially when relevant segments are compared. The government and private sector salaries are virtually identical for the two groups, while self-employment income is slightly higher for those trained in Ontario. The higher average income for Ontario trained lawyers mentioned above can be explained with reference to the different proportions of self-employed as opposed to salaried lawyers in the two groups and the relatively higher returns to self-employment noted previously.

TABLE 3

| | Number of Lawyers | $ Average Income |
|---|---|---|
| 1. Trained in Ontario | 4350 | 28,349 |
| a. Salaried | 1984 | 19,535 |
| i) Public Sector | 469 | 24,326 |
| ii) Private Sector | 1515 | 18,050 |
| b. Self-Employed | 2366 | 35,743 |
| 2. Trained elsewhere in Canada | 762 | 23,608 |
| a. Salaried | 624 | 21,650 |
| i) Public Sector | 345 | 24,608 |
| ii) Private Sector | 279 | 18,001 |
| b. Self-Employed | 138 | 32,448 |
| 3. Trained outside Canada | - | - |
| a. Salaried | | |
| i) Public Sector | | |
| ii) Private Sector | | |
| b. Self-Employed | | |

In Table 4 the effect of place of training on lawyers' earnings is explored in an occupational context consisting of two alternatives: working as a lawyer or working outside the legal profession. It is clear from the data that the majority of individuals with training in law are working as lawyers; average income for this group is higher than for those working outside the occupation. Again this income differential relates to the distribution of lawyers by source of income in the two groups. Irrespective of place of training, virtually all those who are self-employed are working as lawyers; only a handful of those working outside the occupation are not in salaried positions.

Turning to place of training, Table 4 indicates that the majority of those trained in Ontario are working as lawyers. In contrast a large percentage of those trained elsewhere in Canada are working outside the profession.

Of individuals trained in Ontario, average income is higher for those working as lawyers than for those working outside the occupation. This reflects the higher incidence of self-employment in the former group, since salaries are similar across occupational contexts. For those trained outside Ontario, average salaried income is significantly higher for those <u>not</u> working as lawyers.

TABLE 4

| | Number of Lawyers | $ Average Income |
|---|---|---|
| 1. Working as Lawyers | 3945 | 29,607 |
| a. Trained in Ontario | 3517 | 30,337 |
| i) Salaried | 1158 | 19,266 |
| ii) Self-Employed | 2359 | 35,771 |
| b. Trained elsewhere in Canada | 428 | 23,608 |
| i) Salaried | 293 | 19,335 |
| ii) Self-Employed | 134 | 32,945 |
| c. Trained outside Canada | - | - |
| i) Salaried | | |
| ii) Self-Employed | | |
| 2. Working Outside the Occupation | 1167 | 20,997 |
| a. Trained in Ontario | 832 | 19,951 |
| i) Salaried | 826 | 19,911 |
| ii) Self-Employed | 6 | - |
| b. Trained elsewhere in Canada | 334 | 23,603 |
| i) Salaried | 330 | 23,705 |
| ii) Self-Employed | 4 | - |
| c. Trained outside Canada | - | - |
| i) Salaried | | |
| ii) Self-Employed | | |

Table 5 examines lawyers' earnings with respect to occupational context, source of income and years of experience. Generally, the number of lawyers working in the profession decreases with years of experience for salaried and increases with years of experience for self-employed lawyers. For those working as lawyers, the income relationships described in Table 1 are relevant. Briefly, years of experience and source of income are both significant determinants of a lawyer's earnings. Incomes increase with years of experience for both salaried and self-employed lawyers; however, as noted previously, the earnings profiles of the two groups differ significantly. Whereas salaries increase slowly and steadily with years of experience, self-employment income increases dramatically except in the highest experience category. At each experience level salaried incomes are lower than self-employment incomes. This income differential is largest in the 10 to 19 years of experience category because average income rises for salaried lawyers and falls for self-employed lawyers at the highest experience level.

Turning to those working outside the occupation, it is clear that the majority of individuals are concentrated at the upper experience levels. From the few income comparisons which can be made, it would seem that for each experience category, average salaries are higher for those not working as lawyers than for those working in the occupation.

TABLE 5

| | | Number of Lawyers | $ Average Income |
|---|---|---|---|
| 1. | Working as Lawyers | 3945 | 29,607 |
| | a. Salaried | 1452 | 19,280 |
| | i) Up to 2 years exp. | 93 | - |
| | ii) 3-5 years exp. | 549 | 15,356 |
| | iii) 6-9 years exp. | 356 | 20,000 |
| | iv) 10-19 years exp. | 240 | 23,718 |
| | v) 20 years + exp. | 214 | 27,143 |
| | b. Self Employed | 2493 | 35,620 |
| | i) Up to 2 years exp. | 16 | - |
| | ii) 3-5 years exp. | 308 | 16,499 |
| | iii) 6-9 years exp. | 499 | 27,429 |
| | iv) 10-19 years exp. | 1027 | 42,012 |
| | v) 20 years + exp. | 643 | 40,856 |
| 2. | Working Outside the Occupation | 1167 | 20,997 |
| | a. Salaried | 1157 | 20,995 |
| | i) Up to 2 years exp. | 445 | 7,086* |
| | ii) 3-5 years exp. | 61 | - |
| | iii) 6-9 years exp. | 93 | - |
| | iv) 10-19 years exp. | 218 | 28,178 |
| | v) 20 years + exp. | 340 | 34,478 |
| | b. Self-Employed | 10 | - |
| | i) Up to 2 years exp. | | |
| | ii) 3-5 years exp. | | |
| | iii) 6-9 years exp. | | |
| | iv) 10-19 years exp. | | |
| | v) 20 years + exp. | | |

* Income figures may be somewhat depressed owing to the inclusion of articling students.

The last table in this section examines the effect of employment setting on lawyers' earnings while controlling for source of income and years of experience. The three employment contexts are: offices of lawyers, other private sector, and government. As seen in Table 6, salaried lawyers are employed primarily in lawyers' offices, to a lesser extent in government, and least in private industry. Furthermore, the number of employed lawyers in government and privace industry increases with years of experience while the reverse holds for lawyers employed in lawyers' offices.

Owing to these differing distributions with respect to years of experience, the aggregate salary figures are not comparable. As such, average salaried income can only be compared in the latter three experience categories for the employed in government and private industry. The data indicate higher returns in the private sector than in government, especially at the highest experience level.

Self-employed lawyers, who for the most part are running their own legal practices, earn more than salaried lawyers with comparable years of experience. The exception occurs at the highest experience level: lawyers in private industry earn slightly more on average than the comparable self-employed lawyers.

TABLE 6

| | | Number of Lawyers | $ Average Income |
|---|---|---|---|
| 1. | Salaried | 2608 | 20,041 |
| | a. Working in offices of Lawyers | 1299 | 14,037 |
| | i) Less than 2 years exp. | 461 | 6,537* |
| | ii) 3-5 years exp. | 460 | 14,405 |
| | iii) 6-9 years exp. | 232 | 20,830 |
| | iv) 10-19 years exp. | 98 | - |
| | v) 20 years + exp. | 49 | - |
| | b. Working in Public Sector | 814 | 24,445 |
| | i) Less than 2 years exp. | 29 | - |
| | ii) 3-5 years exp. | 88 | - |
| | iii) 6-9 years exp. | 111 | 19,792 |
| | iv) 10-19 years exp. | 204 | 24,380 |
| | v) 20 years + exp. | 382 | 28,822 |
| | c. Working in Other Private Sector | 495 | 28,557 |
| | i) Less than 2 years exp. | 48 | - |
| | ii) 3-5 years exp. | 62 | - |
| | iii) 6-9 years exp. | 106 | 22,191 |
| | iv) 10-19 years exp. | 155 | 27,342 |
| | v) 20 years + exp. | 124 | 43,282 |
| 2. | Self-Employed | 2503 | 35,561 |
| | a. Working in offices of Lawyers | 2493 | 35,620 |
| | i) Less than 2 years exp. | 16 | - |
| | ii) 3-5 years exp. | 308 | 16,499 |
| | iii) 6-9 years exp. | 499 | 27,429 |
| | iv) 10-19 years exp. | 1027 | 42,012 |
| | v) 20 years + experience | 643 | 40,856 |
| | b. Working in Other Private Sector | 10 | - |
| | i) Less than 2 years exp. | | |
| | ii) 3-5 years exp. | | |
| | iii) 6-9 years exp. | | |
| | iv) 10-19 years exp. | | |
| | v) 20 years + exp. | | |

* Income figures may be somewhat depressed owing to the inclusion of articling students.

## 3. ARCHITECTS

Of the 1723 individuals with degrees in architecture, 1541 were working full time. Another 202 did not report income, leaving a population of 1338 architects for the purposes of this study.

The first table (Table 7) indicates the distribution and average income of architects with respect to years of experience, source of income and employment setting. As was the case with the lawyers, the distribution of architects is concentrated at the upper experience levels. As might be expected, most of the architects with less than ten years of experience are wage earners, while the self-employed architects are primarily found in the higher experience categories. Of the salaried architects, the vast majority are employed in the private as opposed to the public sector.

Owing to the small size of the architectural population, much of the income data is not available; however, a few trends emerge from the figures reported. Average income increases steadily with years of experience both for salaried and self-employed architects. Returns to self-employment do not peak and decline as was the case for lawyers. Finally, the income data for the two upper experience categories indicate that salaried architects earn less than their self-employed counterparts, although this differential would likely be smaller at the lower experience levels.

TABLE 7

| | | Number of Architects | $ Average Income |
|---|---|---|---|
| 1. | Up to 2 years experience | 40 | - |
| | a. Salaried | 40 | - |
| | i) Public Sector | - | - |
| | ii) Private Sector | - | - |
| | b. Self-Employed | - | - |
| 2. | 3 to 5 years experience | 161 | 14,645 |
| | a. Salaried | 113 | 13,692 |
| | i) Public Sector | 16 | - |
| | ii) Private Sector | 96 | - |
| | b. Self-Employed | 48 | - |
| 3. | 6 to 9 years experience | 195 | 15,659 |
| | a. Salaried | 161 | 15,616 |
| | i) Public Sector | 24 | - |
| | ii) Private Sector | 137 | 15,393 |
| | b. Self-Employed | 33 | - |
| 4. | 10 to 19 years experience | 454 | 20,368 |
| | a. Salaried | 288 | 18,629 |
| | i) Public Sector | 42 | - |
| | ii) Private Sector | 247 | 18,717 |
| | b. Self-Employed | 166 | 23,392 |
| 5. | 20 years + experience | 489 | 28,223 |
| | a. Salaried | 249 | 21,920 |
| | i) Public Sector | 70 | - |
| | ii) Private Sector | 178 | 22,707 |
| | b. Self-Employed | 240 | 34,745 |

The distribution of architects by place of birth, seen in Table 8, shows similar numbers of architects born in and outside Canada, implying a significant percentage of foreign born architects. It is also worth noting that a much larger percentage of the Canadian-born architects are self-employed than is the case for architects born outside Canada.

Birthplace does not seem to have much influence on income, although average income is slightly higher for self-employed architects born outside Canada than for their Canadian-born counterparts.

TABLE 8

| | | Number of Architects | $ Average Income |
|---|---|---|---|
| 1. | Born in Canada | 727 | 22,119 |
| | a. Salaried | 404 | 17,959 |
| | i) Public Sector | 70 | - |
| | ii) Private Sector | 334 | 17,871 |
| | b. Self-Employed | 323 | 27,319 |
| 2. | Born Outside Canada | 611 | 20,955 |
| | a. Salaried | 446 | 18,053 |
| | i) Public Sector | 93 | - |
| | ii) Private Sector | 354 | 18,168 |
| | b. Self-Employed | 165 | 28,815 |

With respect to place of training, Table 9 indicates that although the most frequently reported place of training was Ontario, a majority of architects were trained outside Ontario, either elsewhere in Canada or abroad. Average self-employment income and the proportion of self-employed (as opposed to salaried) architects is highest for those trained in Ontario, somewhat lower for those trained elsewhere in Canada and significantly lower for those trained outside Canada. Average salaried incomes are somewhat higher for architects trained in Ontario than for those trained abroad, but are significantly lower for architects trained in Canada than for those trained in the other two locations. It is also apparent from the data that for each place of training, self-employed architects earn more than salaried ones, although this differential is small for those trained outside Canada.

TABLE 9

| | Number of Architects | $ Average Income |
|---|---|---|
| 1. Trained in Ontario | 547 | 24,269 |
| a. Salaried | 295 | 18,943 |
| i) Public Sector | 34 | - |
| ii) Private Sector | 261 | 18,952 |
| b. Self-Employed | 252 | 30,502 |
| 2. Trained elsewhere in Canada | 311 | 20,635 |
| a. Salaried | 192 | 16,110 |
| i) Public Sector | 40 | - |
| ii) Private Sector | 152 | 15,345 |
| b. Self-Employed | 119 | 27,964 |
| 3. Trained outside Canada | 480 | 19,154 |
| a. Salaried | 363 | 18,254 |
| i) Public Sector | 88 | - |
| ii) Private Sector | 275 | 18,621 |
| b. Self-Employed | 117 | 21,939 |

As seen in Table 10 the majority of individuals trained in architecture are working as architects. Of those working outside the occupation, the largest group comprises those trained outside Canada. It is also interesting that, as was the case for lawyers, only a fraction of those who are self-employed are not working as architects. In other words, most of those working outside the profession are in salaried positions. Comparing salaries across occupational context, it is apparent that average income is significantly lower for those working as architects than for those working outside the occupation, no matter the place of training. Since the higher salaries are earned by those working outside the profession, it is not surprising to find that the income differential between salaried and self-employed architects working in the occupation is larger than that observed in the previous table in which occupational context was ignored.

TABLE 10

| | | Number of Architects | $ Average Income |
|---|---|---|---|
| 1. | Working as Architects | 996 | 21,723 |
| | a. Trained in Ontario | 441 | 24,258 |
| | i) Salaried | 196 | 16,302 |
| | ii) Self-Employed | 245 | 30,624 |
| | b. Trained elsewhere in Canada | 251 | 21,538 |
| | i) Salaried | 132 | 15,777 |
| | ii) Self-Employed | 119 | 27,964 |
| | c. Trained outside Canada | 304 | 18,207 |
| | i) Salaried | 199 | 15,823 |
| | ii) Self-Employed | 105 | 22,734 |
| 2. | Working Outside the Occupation | 342 | 21,192 |
| | a. Trained in Ontario | 106 | 24,315 |
| | i) Salaried | 99 | 24,178 |
| | ii) Self-Employed | 7 | - |
| | b. Trained elsewhere in Canada | 60 | 16,846 |
| | i) Salaried | 60 | - |
| | ii) Self-Employed | - | - |
| | c. Trained outside Canada | 176 | 20,790 |
| | i) Salaried | 164 | 21,212 |
| | ii) Self-Employed | 12 | - |

Table 11 indicates the distribution and average income of architects with respect to occupation, source of income and years of experience. The majority of architects with less than ten years of experience are working in the occupation in salaried positions. Nonetheless, the profession is concentrated at the upper experience levels: over half of those working in or outside the occupation are found in the two highest experience categories.

From the little income data available it can be seen that at each experience level, average salaries are lower for those working in the profession than for those not working as architects. In addition, as noted in Table 7, salaried architects working in the occupation earn less than their self-employed counterparts.

TABLE 11

| | | Number of Architects | $ Average Income |
|---|---|---|---|
| 1. | Working as Architects | 996 | 21,723 |
| | a. Salaried | 528 | 15,989 |
| | i) Up to 2 years exp. | 19 | - |
| | ii) 3-5 years exp. | 72 | - |
| | iii) 6-9 years exp. | 115 | 15,162 |
| | iv) 10-19 years exp. | 172 | 16,762 |
| | v) 20 years + exp. | 150 | 18,383 |
| | b. Self-Employed | 469 | 28,182 |
| | i) Up to 2 years exp. | 0 | - |
| | ii) 3-5 years exp. | 48 | - |
| | iii) 6-9 years exp. | 33 | - |
| | iv) 10-19 years exp. | 153 | 24,053 |
| | v) 20 years + exp. | 233 | 34,999 |
| 2. | Working Outside the Occupation | 342 | 21,192 |
| | a. Salaried | 323 | 21,312 |
| | i) Up to 2 years exp. | 21 | - |
| | ii) 3-5 years exp. | 40 | - |
| | iii) 6-9 years exp. | 46 | - |
| | iv) 10-19 years exp. | 116 | 21,393 |
| | v) 20 years + exp. | 99 | 27,261 |
| | b. Self-Employed | | |
| | i) Up to 2 years exp. | 19 | - |
| | ii) 3-5 years exp. | | |
| | iii) 6-9 years exp. | | |
| | iv) 10-19 years exp. | | |
| | v) 20 years + exp. | | |

The final table relating to architects examines their employment setting in more detail. The three alternatives are: offices of architects or engineers, other private sector, and government. Salaried architects are employed primarily in offices of architects or engineers, to a lesser extent in private industry, and least of all in government. Given the concentration of architects in the higher experience categories, it is not surprising to find that the number of employed architects generally increases with years of experience in each employment context. Self-employed architects are almost exclusively involved in running architecture or engineering firms and, as noted previously, are primarily found at the upper end of the experience spectrum.

Unfortunately cell sizes are too small for income data to be reported for most of the categories in Table 12. As such, detailed income comparisons cannot be made. Moreover, the differing distributions of architects by years of experience in each employment setting precludes meaningful comparison of the aggregate income data seen in the second column of Table 12.

TABLE 12

| | | Number of Architects | $ Average Income |
|---|---|---|---|
| 1. | Salaried | 850 | 18,008 |
| | a. Working in offices of Architects or Engineers | 416 | 16,054 |
| | i) Less than 2 years exp. | 24 | - |
| | ii) 3-5 years exp. | 59 | - |
| | iii) 6-9 years exp. | 106 | 14,926 |
| | iv) 10-19 years exp. | 171 | 19,094 |
| | v) 20 years + exp. | 56 | - |
| | b. Working in Public Sector | 162 | 17,943 |
| | i) Less than 2 years exp. | 10 | - |
| | ii) 3-5 years exp. | 16 | - |
| | iii) 6-9 years exp. | 24 | - |
| | iv) 10-19 years exp. | 42 | - |
| | v) 20 years + experience | 70 | 19,924 |
| | c. Working in Other Private Sector | 272 | 21,037 |
| | i) Less than 2 years exp. | 6 | - |
| | ii) 3-5 years exp. | 37 | - |
| | iii) 6-9 years exp. | 31 | - |
| | iv) 10-19 years exp. | 76 | - |
| | v) 20 years + exp. | 123 | 25,438 |
| 2. | Self-Employed | 488 | 27,824 |
| | a. Working in offices of Architects or Engineers | 483 | 27,999 |
| | i) Less than 2 years exp. | - | - |
| | ii) 3-5 years exp. | 48 | - |
| | iii) 6-9 years exp. | 33 | - |
| | iv) 10-19 years exp. | 161 | 23,773 |
| | v) 20 years + exp. | 240 | 34,745 |
| | b. Working in Other Private Sector | 5 | - |
| | i) Less than 2 years exp. | | |
| | ii) 3-5 years exp. | | |
| | iii) 6-9 years exp. | | |
| | iv) 10-19 years exp. | | |
| | v) 20 years + exp. | | |

## 4. ENGINEERS

Of the 36,327 individuals with degrees in engineering, 33,129 were working full time. Another 2600 did not report income, leaving an engineering population of 30,528 for the purposes of this study.

The first table in this section (Table 13) examines the distribution and average income of engineers with respect to years of experience, source of income, and employment setting. Although the number of engineers in Ontario vastly exceeds the number of architects, the distribution of the two groups is similar. As with the architects, the engineering population is concentrated at the two upper experience levels. In addition, most of the engineers with less than ten years of experience are salaried, while it is primarily engineers with more than ten years of experience who are self-employed. It should be noted, however, that while the number of self-employed architects approaches the number of salaried ones in the upper experience categories, the same does not hold for engineers. Finally, most of the salaried engineers (like the majority of salaried architects) are employed in the private as opposed to the public sector.

Average income increases slowly and steadily with years of

experience for engineers employed in private industry and in government. There are no significant or constant income differentials between public and private sector employment; government employees earn slightly more than those in private industry at the low experience levels, while the income relationship is reversed in the upper experience categories.

Similarly, the relationship between average income for salaried as opposed to self-employed engineers fluctuates over experience levels.

TABLE 13

| | | Number of Engineers | $ Average Income |
|---|---|---|---|
| 1. | Up to 2 years experience | 2247 | 13,379 |
| | a. Salaried | 2225 | 13,384 |
| | i) Public Sector | 348 | 14,306 |
| | ii) Private Sector | 1878 | 13,214 |
| | b. Self-Employed | 22 | — |
| 2. | 3 to 5 years experience | 4297 | 14,408 |
| | a. Salaried | 4255 | 14,370 |
| | i) Public Sector | 647 | 15,759 |
| | ii) Private Sector | 3608 | 14,120 |
| | b. Self-Employed | 42 | - |
| 3. | 6 to 9 years experience | 4862 | 16,678 |
| | a. Salaried | 4768 | 16,440 |
| | i) Public Sector | 699 | 16,787 |
| | ii) Private Sector | 4069 | 16,380 |
| | b. Self-Employed | 94 | 28,791 |
| 4. | 10 to 19 years experience | 8486 | 19,961 |
| | a. Salaried | 8287 | 19,914 |
| | i) Public Sector | 1290 | 19,561 |
| | ii) Private Sector | 6997 | 19,980 |
| | b. Self-Employed | 199 | 21,885 |
| 5. | 20 years + experience | 10,636 | 22,963 |
| | a. Salaried | 10,091 | 23,061 |
| | i) Public Sector | 1626 | 21,249 |
| | ii) Private Sector | 8465 | 23,409 |
| | b. Self-Employed | 545 | 21,154 |

With respect to place of birth, it can be seen in Table 14 that roughly two-thirds of the engineers were born in Canada. The percentage of foreign-born engineers thus exceeds that of lawyers but is less than that of architects. Average income is higher for Canadian-born engineers than for those born outside Canada, especially in the self-employed and to a lesser extent the private sector categories.

TABLE 14

| | | Number of Engineers | $ Average Income |
|---|---|---|---|
| 1. | Born in Canada | 19,828 | 20,256 |
| | a. Salaried | 19,316 | 20,086 |
| | i) Public Sector | 3,165 | 18,928 |
| | ii) Private Sector | 16,152 | 20,313 |
| | b. Self-Employed | 512 | 26,683 |
| 2. | Born Outside Canada | 10,696 | 17,295 |
| | a. Salaried | 10,306 | 17,369 |
| | i) Public Sector | 1,445 | 18,535 |
| | ii) Private Sector | 8,861 | 17,179 |
| | b. Self-Employed | 390 | 15,335 |

The distribution of engineers by place of training, shown in Table 15, indicates that about half the population were trained in Ontario. Of the remaining engineers, relatively more were trained outside of Canada than in Canadian provinces

other than Ontario. With respect to source of income, it appears that the majority of self-employed engineers were trained in Ontario, although a larger proportion of those trained outside Canada is self-employed than is the case for those trained in the other two locations.

For those trained in Ontario, the self-employed have higher average incomes than the salaried engineers, while the reverse holds for those trained elsewhere in Canada or abroad. Comparing incomes for relevant segments across training locations, it is clear that the self-employed engineers trained in Ontario and the salaried engineers (in both the public and private sectors) trained elsewhere in Canada have the highest average incomes.

TABLE 15

| | | Number of Engineers | $ Average Income |
|---|---|---|---|
| 1. | Trained in Ontario | 15,607 | 19,551 |
| | a. Salaried | 15,150 | 19,339 |
| | i) Public Sector | 2,173 | 18,387 |
| | ii) Private Sector | 12,977 | 19,498 |
| | b. Self-Employed | 458 | 26,580 |
| 2. | Trained elsewhere in Canada | 6,874 | 20,468 |
| | a. Salaried | 6,753 | 20,500 |
| | i) Public Sector | 1,493 | 19,482 |
| | ii) Private Sector | 5,261 | 20,789 |
| | b. Self-Employed | 121 | 18,656 |
| 3. | Trained outside Canada | 8,045 | 17,506 |
| | a. Salaried | 7,721 | 17,563 |
| | i) Public Sector | 944 | 18,697 |
| | ii) Private Sector | 6,777 | 17,405 |
| | b. Self-Employed | 323 | 16,137 |

The most striking result obtained in Table 16 is the large number of engineers working outside the occupation: roughly half of those with training in engineering are not working as engineers. This relationship applies across training locations. As distinct from the other two professions discussed, there is both a larger number and percentage of self-employed engineers working outside than in the occupation.

Average income for those not working as engineers is consistently higher than for the comparable group (by place of training and source of income) working in the occupation. The exception is self-employed engineers trained outside Canada; average income is suspiciously low for the part of this group that are not working as engineers.

TABLE 16

| | | Number of Engineers | $ Average Income |
|---|---|---|---|
| 1. | Working as Engineers | 15,047 | 17,587 |
| | a. Salaried | 14,724 | 17,551 |
| | i) Up to 2 yrs. exp. | 1,138 | 12,962 |
| | ii) 3-5 yrs. exp. | 2,237 | 13,579 |
| | iii) 6-9 yrs. exp. | 2,569 | 15,659 |
| | iv) 10-19 yrs.exp. | 4,102 | 18,858 |
| | v) 20 yrs.+ exp. | 4,677 | 20,460 |
| | b. Self-Employed | 323 | 19,225 |
| | i) Up to 2 yrs.exp. | 13 | - |
| | ii) 3-5 yrs. exp. | 8 | - |
| | iii) 6-9 yrs. exp. | 18 | - |
| | iv) 10-19 yrs. exp. | 64 | - |
| | v) 20 yrs. + exp. | 220 | 20,627 |
| 2. | Working Outside the Occupation | 15,482 | 20,802 |
| | a. Salaried | 14,903 | 20,709 |
| | i) Up to 2 yrs. exp. | 1,087 | 13,827 |
| | ii) 3-5 yrs. exp. | 2,018 | 15,247 |
| | iii) 6-9 yrs. exp. | 2,199 | 17,352 |
| | iv) 10-19 yrs. exp. | 4,185 | 20,947 |
| | v) 20 yrs.+ exp. | 5,414 | 25,305 |
| | b. Self-Employed | 579 | 23,195 |
| | i) Up to 2 yrs. exp. | 9 | - |
| | ii) 3-5 yrs. exp. | 34 | - |
| | iii) 6-9 yrs. exp. | 76 | - |
| | iv) 10-19 yrs. exp. | 135 | 25,970 |
| | v) 20 yrs. + exp. | 325 | 21,511 |

In Table 17 the distribution of engineers by employment setting and source of income indicates that there are even numbers of salaried professionals working both in and outside the occupation. As noted above, the proportion of self-employed not working as engineers exceeds that working in the profession. With respect to years of experience, the engineering population, like the populations of lawyers and architects, is concentrated at the two upper experience levels. However, in contrast to these other professions, it is not the case that there is an insignificant number of salaried engineers with less than ten years of experience working outside the occupation. Rather, about half of the less experienced individuals with training in engineering are not working as engineers. This large number of engineers working outside the profession, especially at the upper experience levels, confirms the validity of defining professional identity on a more inclusive basis than occupation. In fact, occupational context is an important determinant of an engineer's earnings: average incomes are higher for those working outside the profession than for those working as engineers. This income relationship also holds across employment settings by years of experience.

TABLE 17

| | Number of Engineers | $ Average Income |
|---|---|---|
| 1. Working as Engineers | 15,046 | 17,587 |
| a. Trained in Ontario | 7,208 | 17,621 |
| i) Salaried | 7,038 | 17,573 |
| ii) Self-Employed | 170 | 19,598 |
| b. Trained Elsewhere in Canada | 3,534 | 18,364 |
| i) Salaried | 3,483 | 18,423 |
| ii) Self-Employed | 51 | - |
| c. Trained outside Canada | 4,304 | 16,892 |
| i) Salaried | 4,203 | 16,792 |
| ii) Self-Employed | 102 | 21,060 |
| 2. Working Outside the Occupation | 15,481 | 20,803 |
| a. Trained in Ontario | 8,400 | 21,206 |
| i) Salaried | 8,112 | 20,869 |
| ii) Self-Employed | 287 | 30,716 |
| b. Trained elsewhere in Canada | 3,340 | 22,692 |
| i) Salaried | 3,271 | 22,710 |
| ii) Self-Employed | 70 | - |
| c. Trained outside Canada | 3,741 | 18,210 |
| i) Salaried | 3,519 | 18,483 |
| ii) Self-Employed | 222 | 13,881 |

Given the large number of engineers working outside the profession, it is not surprising that a majority of engineers are not working in offices of architects or engineers. (See Table 18). A sizeable number of the self-employed and about three quarters of the salaried engineers are working in private industry. Salaried engineers are employed to a lesser extent in government and least in offices of architects and engineers. These results are significantly different from those found for architects and lawyers.

Average income increases with years of experience for salaried engineers in each employment setting. Comparing salaries at each experience level, it appears that while salaries in the two private sector contexts are similar, engineers employed in government earn somewhat more in the lower experience categories than those in the private sector.

Unfortunately there is insufficient data with respect to self-employment income to permit earnings comparisons on the basis of source of income and/or employment setting.

TABLE 18

| | | Number of Engineers | $ Average Income |
|---|---|---|---|
| 1. | Salaried | | |
| a. | Working in offices of Architects or Engineers | 3018 | 19,526 |
| i) | Less than 2 years exp. | 245 | 14,080 |
| ii) | 3-5 years exp. | 461 | 13,823 |
| iii) | 6-9 years exp. | 485 | 16,727 |
| iv) | 10-19 years exp. | 863 | 20,860 |
| v) | 20 years + experience | 964 | 23,857 |
| b. | Working in Public Sector | 4610 | 18,805 |
| i) | Less than 2 years exp. | 348 | 14,306 |
| ii) | 3-5 years exp. | 647 | 15,759 |
| iii) | 6-9 years exp. | 699 | 16,787 |
| iv) | 10-19 years exp. | 1290 | 19,561 |
| v) | 20 years + exp. | 1626 | 21,249 |
| c. | Working in Other Private Sector | 21,998 | 19,157 |
| i) | Less than 2 years exp. | 1632 | 12,948 |
| ii) | 3-5 years exp. | 3146 | 14,164 |
| iii) | 6-9 years exp. | 3584 | 16,333 |
| iv) | 10-19 years exp. | 6134 | 19,855 |
| v) | 20 years + exp. | 7501 | 23,589 |
| 2. | Self-Employed | | |
| a. | Working in offices of Architects or Engineers | 347 | 20,284 |
| i) | Less than 2 years exp. | 13 | - |
| ii) | 3-5 years exp. | 8 | - |
| iii) | 6-9 years exp. | 20 | - |
| iv) | 10-19 years exp. | 75 | - |
| v) | 20 years + exp. | 230 | 21,514 |
| b. | Working in Other Private Sector | 555 | 22,706 |
| i) | Less than 2 years exp. | 9 | - |
| ii) | 3-5 years exp. | 34 | - |
| iii) | 6-9 years exp. | 73 | - |
| iv) | 10-19 years exp. | 124 | 18,737 |
| v) | 20 years + exp. | 315 | 24,148 |

# CHAPTER III

## THE EMPLOYED PROFESSIONAL: PROBLEMS AND CONCERNS

### A. INTRODUCTION

The previous chapter has provided a description of the numbers of professional employees and their economic position in three of the four professions under review. The purpose of the present chapter is to describe the place of the salaried professionals within the regulatory framework to which they are subject in the four professions, outlining some of the problems, as well as benefits, which the employee, his employer, and the regulatory body experience as a result of the interaction between employment and professional status.

This chapter will not provide a comprehensive description of the accounting, architecture, engineering, and legal professions. Such detailed treatment is available in the Professional Organizations Committee's publications on the "History and Organization" of each profession.[1] This chapter will focus on the employed members within these regulatory regimes.

It should be stated at this point that much of the discussion will be irrelevant to those engaged in accounting in Ontario. The reason for this is the orientation of the study: the major area of interest is the interaction between licensing and employee status, particularly when employment is in industry or government. For accountants, this is largely an academic question, as those employed in industry or government tend to be unlicensed. It is only those engaged in the practice of "public accountancy", who are required to be licensed under the Public Accountancy Act.[2] Most of these licensees are sole practitioners or partners in public accounting firms. The number of licensees who are employees is small (825 of 6,138 licensees), and these employees tend to be employed by public practitioners.[3] The employees who work in accounting in government or industry may be Chartered Accountants,[4] Registered Industrial Accountants or Certified General Accountants. Therefore, while some of the concerns of employed professionals and their employers discussed in the following sections may be experienced by accountants employed in government or industry - for example, concern about recognition of status and desire for consultation - these problems may not have the same immediacy as in the other professions, where employment problems may be accompanied by conflict with the licensing regime.

## B. THE EMPLOYED PROFESSIONAL AND THE REGULATORY REGIME

The concerns of the employed professional which flow from his employment status revolve about both economic and what can be termed "professional" issues, with economic issues the most pressing. Many of their concerns are about the adequacy of their remuneration, whether comparisons are made to their self-employed counterparts or to individuals in other professions. As well, problems, potential or real, may arise out of tensions between their professionalism and the demands of the bureaucratic organization for which they work: recognition of professional status, conflicts with their profession's ethical standards, and desire for professional development.

With regard to remuneration, it is often suggested that salaried professionals earn less than their self-employed counterparts, and that this is a major source of discontent. Within the engineering profession, the real concern appears to be the discrepancy between the income of engineers as a profession vis-a-vis the income of other professions, rather than the discrepancy between salaried and self-employed engineers. Data and publications provided by both the Federation of Engineering and Scientific Associations (FESA) and the Salaried Engineers Division of the APEO indicate that the income of engineers is falling behind that of other sectors of industry.[5] The reason for this

regression seems to lie in the interaction between the supply and demand for engineers' services, with the availability of a large number of engineers having a depressing effect on the salaries offered to them.[6]

While most engineers may find their salaries inadequate as a consequence of looking outside their profession, some employee engineers will also make comparisons to self-employed engineers.[7] Members of the other professions under study tend to focus on differentials in income within the profession, rather than across professions. The government lawyer or architect inevitably compares his salary with that of an old classmate in private practice. One explanation for this difference in focus between the professions may be the dominance, in terms of numbers in their profession overall, of salaried members in the engineering profession. This contrasts with the numbers of salaried members in law or architecture (98% versus 16% in law and 53% in architecture).[8]

The conclusion that the employed professional earns less than his self-employed counterpart is generally true in all of the professions. The data in Chapter II show that one of the major determinants of income level is source of income (self-employment versus salary). But it is misleading to focus only on the average difference in income of salaried and self-employed

professionals, for there are reasonable explanations for the differentials. Years of experience is the most obvious, for the self-employed tend to be older than the salaried professionals.

In the early years in the profession, differentials between employed and self-employed are not large. As time goes on, the gap between the incomes of salaried and self-employed with equivalent experience widens. One can speculate that a partial explanation comes from the fact that the self-employed are receiving some compensation for risks which they bear that salaried professionals do not. Furthermore, salaried professionals, at least in government and industry, are compensated in ways that do not emerge in the salary picture - through greater job security, pension plans, and fringe benefits. Finally, it might be hypothesized that those in self-employment may be the most adventurous and qualified.

Yet even if the income differentials are explicable by such factors, there is always room for argument as to whether the size of the gap in earnings between the two groups is justifiable in terms of these factors. Many salaried professionals would argue that it is <u>not</u> justifiable and that the gap results from lack of effective bargaining with the employer. They would argue that, lacking access to information on salaries, they cannot

bargain effectively with their employer and so reach a more acceptable level of remuneration. Some would feel that they also lack negotiating power when they work within a bureaucracy, and it is this which explains their lower level of compensation. The self-employed professional, being an entrepreneur, has some control over his income through bargaining with clients and through controlling the number of clients. The salaried professional, as one individual facing a large employer, has little bargaining power unless the uniqueness of his personal skills give him some particular leverage that an individual would not normally have. Theoretically, the employed professional has the freedom to switch employers or to opt for self-employment, but in reality that option will not always be open. As individuals get older, they may often become locked into one place of employment because of the accrued seniority and pension rights and because their skills become particular to one employer.[9]

The lack of bargaining power for individuals in a bureaucracy is a special concern for engineers because of the problem of "mid-career obsolescence". There is a phenomenon in the engineering profession in which engineers' salaries rise most quickly in the first few years of employment and flatten out in mid-career. At that point, skills may be dated, while job mobility may be impossible because of extreme specialization of skills.[10] Attachment to seniority rights and pension plans

may also militate against mobility. The result is a decrease in bargaining power with the employer, and also a decrease in income, over time, as a result of both the declining bargaining power and the decline in the value of the services to the employer.

As a result of these economic factors, salaried professionals feel that they are falling behind in terms of income. They feel that they need methods for redressing this economic problem. Whether this problem should be redressed, and the question of how to do so, will be discussed in subsequent chapters.

At this point, discussion should focus on "professional" concerns which the salaried professional may have. These could be grouped in a variety of ways, but for this paper they will be grouped under four headings: problems of ethics, status, recognition, and access to the regulatory body. The first three sets of problems are largely matters involving interaction between the employee and the employer. While the regulatory body is involved, its input tends to be an indirect one. In discussing these problems, the prototypical salaried professional to be kept in mind is the employee in government or an industrial or commercial enterprise. The salaried professional in a professional firm may experience ethical, status, and recognition problems, but in no way in the same degree as the professional

outside the traditional firm whose ultimate superiors are not themselves professionals.

The salaried professional's problems stem from the dual allegiance which is an inevitable part of his role. He is a "professional", likely licensed by a self-regulatory body and imbued, in his early training, with values of professionalism.[11] At the same time, he possesses another identity - that of a member of a corporate body or government. He will have loyalties to that enterprise and be concerned with the success of its ongoing activities. The relative weight of these two loyalties inevitably varies between individuals, depending on their length of service with the firm or government, the strength of their professional identity, and their degree of mobility in the employer's hierarchy of authority.[12]

Many salaried professionals will experience some problems of the types to be discussed so long as they remain in a bureaucracy, and these problems will not be the same as those facing their self-employed counterparts. Employed professionals can expect to experience ethical problems associated with employment status. In each of the professions, the self-regulatory body has disciplinary powers in addition to licensing powers, and each body has prescribed ethical standards of conduct to be observed by its licensees. Compliance with these standards is

monitored, and employee, as well as self-employed, members are expected to comply with these ethical standards.[13] Yet, what happens if the obligation to obey these standards comes into conflict with an order from the employer? The scenario may be one in which the employer orders the employee to do something illegal (for example, an order to an engineer to design a scaffold that does not meet the requirements of the Construction Safety Act), or it may be an order to do something which the employee feels is contrary to the public interest, albeit not clearly illegal. For example, the lawyer in a large corporation might be faced with an order to seek judicial review of the decision of an administrative tribunal in order to delay its implementation, even though he believes that decision to be correct and in the public interest. The lawyer in private practice might refuse to proceed, depending on the importance to him of the client's business, but the salaried lawyer has only the one client. His refusal might mean the end of his job, either through discharge, blocked opportunities for promotion, or forced resignation.

It is difficult to know how frequently such perceived ethical conflicts arise.[14] Assuming that they do occur, the first problem facing the salaried professional is whether to pursue the ethical issue at all, for "boat rocking" can be

detrimental to promotion opportunities and merit increments. If he does decide to act and the response of his immediate superiors is unsatisfactory, he must then decide whether to pursue the matter at a higher stage in the employer's hierarchy. It may be possible to resolve the problem in the enterprise, although the employee risks alienating his superiors even if he "succeeds" on this issue. The victory might easily be a Pyrrhic one.

If there is no sympathy for his position within the enterprise, he must then decide how best to harmonize his dual allegiance to his profession and to his employer. Ultimately he is vulnerable to disciplinary action by the professional association if he is guilty of professional misconduct. This leaves the employed professional in an ethical dilemma. Resignation is one alternative, although a drastic one. "Whistle-blowing", in the sense of going to the regulatory body or some other institution with authority such as a government agency, can be expected in only the most egregious case. Even then one must wonder whether whistle-blowing will occur unless the employee has supportive institutions such as a union or an interested professional association, which can try to buttress the employee's position and monitor discriminatory treatment of the employee.[15]

Yet major ethical conflicts are less likely to be a problem than conflicts which arise because the employee disagrees with

his employer as a result of the exercise of his professional judgment. Illegality is not in issue - only conflict of judgment and perhaps values. Then the employee needs some mode of access and consultation to voice these concerns to the employer, rather than protection from disciplinary action by his professional association.

Aside from problems in complying with the existent Codes of Ethics of the professional associations, salaried professionals can sometimes feel that the Codes or standards fail to address the problems with which they are faced. Often, the charge is that the Codes of Ethics are designed to deal with the conduct of the private practitioner, addressing questions of advertising, competition with fellow professionals, or fees. The salaried professional has his own particular set of problems, and they are rarely addressed. For example, lawyers who work with governments or corporations may have conflict of interest problems, as they try to decide whether to do outside work for private clients and, if so, for whom.[16] Furthermore, lawyers, architects, or engineers in government may feel the need for guidelines on confidentiality as they try to juggle loyalty to their employer with obligations to the public interest when the press seeks information. Of course, the answer to this problem might well be left to negotiation between employer and employees, but

guidance from the Code of Ethics might also be appropriate.

The engineers are unique among the professions in this regard, for their Code of Ethics has a specific section dealing with the "Duty of Employee Engineers".[17] That is not so with the other professions, whose Codes are either addressed to private practitioners or expressed in quite general language.[18]

In addition to ethical problems, the salaried professional often experiences what can be termed "status" problems. These involve questions of work assignment, control of work, and unauthorized practice by non-licensed employees. In each case, the employee faces a problem because his employer fails to acknowledge the significance of the professional licence, both as a method for maintaining standards in a particular skill and as the mark of an individual who has been trained to exercise discretion and who, as a result, likely desires some degree of autonomy.

Work assignment becomes a problem for the salaried professional when an employer fails to acknowledge his special skills and gives him jobs which fail to utilize his training. The complaint may be that an employer has routinized production processes, so that a professional engineer ends up doing work which a technician is capable of doing, or a lawyer in government

may get caught up in administrative work when he feels that he should be doing more complex "legal" tasks. Aligned with this problem of work assignment and professional status is the question of supervision of work processes. Often, an employed professional will complain that his supervisor is a non-professional, who is incapable of evaluating the professional's work, yet has the authority to do so. In a corporate context, this might mean that unpopular opinions from the legal department get selectively edited or re-routed before reaching senior decision-makers. Both personal prestige and professional judgment are prejudiced in such a system.

A further status problem stems from perceptions of unauthorized practice in the particular enterprise. The statutes conferring self-regulating authority on each of the professions under study contain prohibitions on unauthorized practice by non-licensed individuals.[19] Problems may arise when an employer, in structuring his work force, breaks down jobs traditionally performed by licensed professionals and assigns them to para-professionals or to unlicensed professionals. The result is that engineers and architects have complained about the use of paraprofessionals in the design process, while lawyers in government complain about unlicensed "lawyers" doing legal work. Charges of unauthorized practice inevitably require consideration

of the role of the profession's regulatory body, for it bears the statutory responsibility to prevent such occurrences. Often, the complaint of the employed professional is that the regulatory body fails to take adequate measures to protect against unauthorized practice within corporations or government.[20] A possible exception to this alleged inactivity, in the engineering profession, has been the protection accorded the title "professional engineer", which is closely safeguarded. However, the practice of engineering within corporations or government has not been closely scrutinized by the APEO, causing some discontent among salaried engineers who feel that unregistered and unqualified people are doing engineers' work.[21]

Further status problems arise out of the struggle to control the quality of work. The leading attributes of professionalism, as outlined at the beginning of this paper, are autonomy, individual discretion as to decisions, and service to the client and the community. Imbued with such values, the salaried professional may feel uncomfortable within a bureaucratic setting in which he cannot control the content of reports which he has written or control the circulation of opinions which he has given to particular figures for whom he has prepared them. He may also feel dissatisfied if he is denied recognition for reports which he has written or inventions for which he is responsible.

This last "status" issue, control of quality of work, is also illustrative of the "recognition" problems perceived by the salaried professional. By recognition is meant employer acknowledgment of the salaried professional's special status, which should carry over into attempts to assist in its development. The salaried professional may feel the need for contacts with others in his profession, through attendance at conferences or through continuing competence courses. He may feel the need for sabbaticals to allow him to keep his skills current. Frustration arises if the employer fails to acknowledge this concern for career development and treats the professional in the same way as the blue-collar worker.

The salaried professional may also feel frustrated if an employer fails to acknowledge professional specialization. Sometimes an employer's job classification system will conflict with the professional's acquired specialization, hampering full development of the specialty and perhaps giving inadequate remuneration from the employee's viewpoint. Specialization can become a particular problem for the employee in terms of promotion within the enterprise. The acceptance of a more senior management position may remove him from the practice of his specialty, yet refusal jeopardizes him monetarily and sometimes in terms of credibility. He is faced with the dilemma of whether to sacrifice a valuable acquired expertise for promotion.

If one were to try to capsulize the major frustration that the salaried professional has, it would lie in the lack of consultation with the employer. The professional employee is highly trained and autonomous in outlook and feels the need for recognition of his special status. He has valuable information to contribute and often feels part of a management team. Therefore, consultative mechanisms are desired as a way to satisfy these needs, as further discussion will show.[22]

Discussion to this point has concentrated on the problems of the salaried professional with his employer, in effect concretizing somewhat the abstract discussion of conflicts between professionalism and bureaucracy identified in Chapter I. The employed professional has problems with the regulatory body as well as with his employer, and these should not be ignored. It has been noted that the professions' Codes of Ethics, aside from that of the professional engineers, do not address the particular problems of salaried professionals. As well, the complaint that the governing bodies refuse to enforce the rules against unauthorized practice in cases involving in-house services has been identified.[23]

It has also been a common complaint that the regulatory body is unrepresentative of the interests of the salaried professionals. The Registration Board of the Ontario Association

of Architects, which licenses architects and supervises the disciplinary process, has been described as unrepresentative, on the basis that it is dominated by private practitioners attached to large firms.[24] The same charge can be levelled against the Benchers, who govern the Law Society of Upper Canada.[25] In the past, the complaint was also made about the APEO Council. In recent years, the Council has been perceived to be more responsive to the interests of employee engineers, and its make-up contains a substantial number of employee members.[26] To some extent, private practitioner dominance is explicable by the greater opportunity of private practitioners, in contrast to salaried professionals, to obtain time to serve on such bodies and to support themselves while doing so. An employer in the private sector may see little benefit accruing to him from seconding a highly paid employee to the service of a regulatory body.

It is a source of discontent among those salaried professionals who feel that their regulatory body does not adequately represent them, that they must pay the same fees as the self-employed (including support of the compensation fund in the case of lawyers), yet their returns are minimal. It is felt that differential fee structures might be considered as an alternative to the present system. More preferable would be demonstration of awareness of the concerns of employed professionals.

Some of the ways in which this could be done will be discussed in the following chapter.

## C. THE EMPLOYER OF THE EMPLOYED PROFESSIONAL

The problems arising in the relationship between the employer and his salaried professional staff are largely ones of personnel management: how to harmonize the concept of management's right to manage the workplace with the professional employee's claims for an advisory and consultative role; how to satisfy demands for increased remuneration or for professional benefits to which a cost figure can be attached (for example, sabbatical leaves or subsidized continuing education).

Of more interest here are the problems which the employer might face as a result of the system of professional self-regulation. The main area in which one would expect an employer to encounter problems with professional self-regulation is unauthorized practice. Each of the regulatory schemes contains a definition of the scope of practice in somewhat general terms.[27] Those who fall within the definition must be licensed. Yet the employer may have interests that come into conflict with these statutory provisions. The employer in the private sector, in an industrial or commercial undertaking, wants to minimize costs of production in order to maximize profits. Therefore,

he may wish to break down production processes as far as possible into standardized tasks, allocating these tasks to technologists or technicians. Such jobs, in the past, may have been the preserve of licensed professionals. By breaking them down, the employer may achieve economies of scale, and he may be able to hire employees for the tasks at salaries lower than those for licensed professionals. Yet he may be accused of engaging these unlicensed employees, doing what was formerly professionals' work, in the unauthorized practice of engineering or architecture or law. Similarly, the employer may be using his licensed professionals for many of the tasks performed by the unlicensed.[28] Does the licensees' entry convert the unlicensed employees' work into "unauthorized practice"?

The problem of unauthorized practice does not appear insuperable. In fact, it is a problem which seems to be avoided by the regulatory bodies through a policy of limited enforcement. The APEO, for example, is active in protecting the title of "professional engineer", but it is relatively inactive in supervising in-house use of engineering services.[29] In addition, guidelines have been established by the APEO which deal with the use of paraprofessionals and the situations in which the supervision of a licensed professional engineer is needed.[30] Rigorous investigation of corporate practice has been avoided by the APEO, and no doubt would be vigorously opposed by an

employer, on the grounds that he should be free to run his own business. The Law Society, too, seems relatively unconcerned with the operations of in-house legal services. Only if the public interest is threatened, as in the case of an unlicensed lawyer in a law firm providing legal advice to an individual citizen, is the Law Society concerned.

What would happen if the regulatory bodies undertook a vigorous programme to enforce the unauthorized practice rules? Would employers be severely inconvenienced and the efficiency of their production processes threatened? Clearly, the answer depends on the number of unlicensed professionals or paraprofessionals presently doing jobs which should be performed by licensees, as well as the narrowness with which the regulatory body interprets the scope of practice. If the number of contraventions is high, the effect of a vigorous enforcement policy on the employer's costs of production might be significant. Yet weighed against this must be the reduction in costs to the public which might come about through higher standards of workmanship by the professional employees, who are theoretically trained and regulated to protect the public interest. One might argue that the market already protects the public, since an employer will use professionals in situations in which it is costly for him to fail to do so, for example, because he fears imposition of civil liability because of unsafe products. One

would need extensive empirical data for various corporations and product markets to weigh the costs of substituting professionals for paraprofessionals, both in terms of costs avoided by the public and added costs of production for the employer. At this time, one can only identify the potential problem which an employer faces in dealing with a self-regulating profession if in-house allocation of professional tasks is rigorously monitored.

There are benefits for an employer, in addition to potential problems, which accrue from the existence of a self-regulating professional body. One major benefit lies in that body's expertise in evaluating and certifying professional qualifications, thus aiding in the hiring process. It is arguable that employers with a large number of professional employees could acquire the necessary expertise to evaluate qualifications, but small employers, especially those with only a few professional employees, might find it difficult and costly to evaluate qualifications. The profession's regulatory body has the requisite expertise to perform this service and can do so efficiently for both large and small employers. Instead of many employers having to duplicate the evaluation service, one central body can do so.[31]

In addition to providing a certification service, the system of professional self-regulation can assist the employer in the evaluation of his own professional employees' work.

Some employers who are not professionals themselves will be unable to evaluate the advice provided by their professional employees. The existence of the profession can provide some protection. The licence certifies initial competence, while the threat of disciplinary action for professional misconduct and the sense of responsibility to client that should accompany professionalism provide some ongoing protection to the employer. Of course, the threat of disciplinary action by the employer for improper advice or conduct is a powerful incentive to the employee to perform well and probably much more effective than the scrutiny of the regulatory body or the aura of professionalism.[32] Yet the employer cannot affect the employee's ability to practise. Only the regulatory body can do that, and the employer may welcome the protection that flows to him from employee awareness of the importance of preserving that licence.

## D. THE REGULATORY BODY AND THE EMPLOYED PROFESSIONAL

Some of the problems of the regulatory bodies with respect to their employee members have already been raised. The unauthorized practice question is an especially difficult one. From the profession's viewpoint, there are serious problems in trying to enforce the rules against unauthorized practice. Obtaining information about in-house operations is a major obstacle.

While it is relatively easy to identify improper use of title, through scrutiny of job classifications and job postings, it is difficult to get information about improper work practices.

Even if such information is available, enforcement remains a problem. Under the various statutory provision prohibiting unauthorized practice, it is the individual who does the professional's work who can be prosecuted, not the employer who ordered him to do it.[33] Only moral suasion can be used with the employer in an effort to get him to use licensed professionals.

The above discussion assumes that the regulatory body might wish to supervise in-house practices. In fact, there may be justification for not doing so if there is no consequent danger to the public interest. The rationale for self-regulation is protection of the public interest. A regulatory body, such as the Law Society, might well feel that services within a corporation or government by non-licensed professionals present no threat to the public, while satisfying the employer's needs. This is one approach to the treatment of in-house practices. An alternative is that adopted by the APEO with its Guidelines for delegation and supervision of engineering work. Tasks may be broken down and assigned to unlicensed workers so long as a licensee is in ultimate control of processes, ensuring that public health and safety are protected and that applicable rules

and laws are observed, yet leaving some flexibility for employers.

Aside from unauthorized practice, the regulatory body may experience problems particular to its salaried members in the area of ethical standards. An employee, claiming that he is faced with an ethical problem because of his employer's instructions, may seek the assistance of the regulatory body in resolving his conflict. The regulatory body faces a dilemma in deciding whether to intercede, for such problems have a mixed character, with aspects of labour-management relations blending with the definition of the professional role. Theoretically, one would think that the regulatory body should step in to assist the member, since the ethical standards have been developed to protect the public interest. However, in practice the likelihood of vigorous assistance is minimal. Ethical standards are drafted in general terms, leaving room for a great deal of debate between the employee and his employer, which the regulatory body would likely wish to avoid. Furthermore, many members of the regulatory body will be employers themselves. Failing to perceive the employee's problem, they may see no reason to intervene.[34]

A further problem for the regulatory body with a number of salaried professionals as members lies in maintaining standards of practice and ensuring competence. The employed professional is a _de facto_ specialist, for he will develop expertise in a

particular area with his employer. For example, the corporate counsel may develop great expertise in corporation or tax law. Should he shift to self-employed status, he may find that some of his skills, for example, in real estate or family law, are out-of-date. The regulatory body has an obligation to protect the public interest and to ensure competence of its members. Therefore, mobility is a problem. Of course, a parallel problem can arise with the de facto specialization in self-employed practice if a private practitioner shifts fields, for example, from family law to tax law or from electrical engineering to civil engineering. The solution to the problem, in either case, lies in the area of continuing competence requirements or recertification, as discussed in the following chapter.

## E. SUMMARY

The major problems of the employed professional are not unique. Demands for better remuneration and recognition are made by many of those employed, although admittedly the value which the employed professional would attach to recognition issues may differ from that assigned by a blue-collar worker.

Aside from economic issues, the employed professional, his employer, and the regulatory body to which he belongs may face problems in harmonizing the demands of the bureaucracy with professional licensing. The resolution of ethical conflicts

and compliance with unauthorized practice restrictions can be difficult for all three parties. Having identified the problems, the following chapter tries to provide some methods for solution.

## NOTES - CHAPTER III

1. For more detailed discussion of the regulation of the practice of each of the professions, see Professional Organizations Committee, Appendices A,B,C and D to the Research Directorate's Staff Study, "History and Organization of the Accounting, Architectural, Legal and Engineering Professions" (respectively)(1978).

2. R.S.O. 1970, c. 373, s. 7 (a). The term "public accountancy" is defined in s. 1 (c) in the following words:

> "public accountant" means a person who either alone or in partnership engages for reward in public practice involving,
>
> (i) the performance of services which include causing to be prepared, signed, delivered or issued any financial, accounting or related statement, or
>
> (ii) the issue of any written opinion, report or certificate concerning any such statement,
>
> where, by reason of the circumstances or of the signature, stationery or wording employed, it is indicated that such person or partnership acts or purports to act in relation to such statement, opinion, report or certificate as an independent accountant or auditor or as a person or partnership having or purporting to have expert knowledge in accounting or auditing matters, but does not include a person who engages only in bookkeeping or cost accounting or in the installation of bookkeeping, business or cost systems or who performs accounting or auditing functions exclusively in respect of,
>
> (iii) any public authority or any commission, committee or emanation thereof, including a Crown company,
>
> (iv) any bank, loan or trust company,
>
> (v) any transportation company incorporated by Act of the Parliament of Canada, or

(vi) any other publicly-owned or publicly-controlled public utility organization.

3. Institute of Chartered Accountants of Ontario, Annual Report, 1977-78, Table 3.

4. The number of Chartered Accountants who have employee status breaks down in the following manner:

| | |
|---|---|
| Public practice employee | 2,481 |
| Industrial and commercial | 4,341 |
| Government and academic | 1,586 |
| | 8,408 |

The total membership in the Institute of Chartered Accountants of Ontario (ICAO) as of February 28, 1978 was 13,070 (id., Table 1 (iii)).

5. See "A Study of the Drift in Engineers' Income from 1961 to 1977" (brief by W. W. Hastings for the Salaried Engineers Division - APEO); Association of Professional Engineers of the Province of Manitoba Recommended Salary Schedule (October 18, 1977); C. M. Bailey, Collective Bargaining by Employee Engineers and Scientists - The FESA Approach (Address to Chemical Institute of Canada, May 26, 1975) at 3 - 4.

6. The Hastings' study shows that the number of engineers has grown at a greater rate than the work force in general. Between 1961 and 1975, the work force increased by 81%, while the Ontario engineering population increased by 100% (id. at 15).

7. For example, in the Hastings' study it was noted that the income of self-employed engineers increased 20% from 1961 to 1975, while that of senior employee engineers dropped 8% (id. at 13).

8. The number of "employed" professionals is not easy to determine, as the data in Chapter II show. Some of the salaried professionals no longer work within the occupation (as, for example, the engineer who goes on to an executive position in a corporation). Also, for purposes of this study, professionals employed in the offices of professional firms are treated as a distinct group.

Therefore, in law, the number of "employed" professionals is 16%, excluding those employed in law offices and closer to 31%

if this group is included (2,123 or 3,758 of 12,315 members). (Figures provided by Law Society of Upper Canada, August 1978).

The percentage of employed professionals in architecture and engineering come from the data in Chapter II. The percentage of employed architects is 53% if one uses the data in Table 11 and rises to 63% if one uses Table 7.

9. P. Doeringer and M. Peore, Internal Labor Markets and Manpower Analysis (Lexington: Heath Lexington Books, 1971), ch. 2.

10. For example, an engineer highly skilled in nuclear reactor engineering may find himself sidelined if use of nuclear power is reduced and thermal power preferred. The problem of mid-career obsolescence is further discussed in S. Goldenberg, Professional Workers and Collective Bargaining (Canada Task Force on Labour Relations, Study No. 2, 1968) at 22. Goldenberg describes this aspect of mid-career obsolescence as "trained incapacity". See also D. Fraser and S. Goldenberg, Collective Bargaining for Professional Workers: The Case of the Engineers (1974), 20 McG. L.J. 456 at 463-64; D. Fraser, Collective Bargaining for Professional Engineers in Ontario (LL. M. Thesis, Osgoode Hall Law School, York University, 1973) at 22.

11. The licensing bodies for the professions under study here are: The Public Accountants Council (Public Accountancy Act, R.S.O. 1970, c. 373, ss. 3, 7 (a)); the Registration Board of the Ontario Association of Architects (Architects Act, R.S.O. 1970, c. 27, s. 5); The Council of the Association of Professional Engineers of Ontario (Professional Engineers Act, R.S.O. 1970, c. 366, as am. S.O. 1972, c. 45, ss. 11, 12, 13, 17); The Benchers of the Law Society of Upper Canada (Law Society Act, R.S.O. 1970, c. 238, s.10 ).

12. Fraser and Goldenberg (supra, note 10 in 20 McG. L.J. at 462) note that engineers have less identity with their profession and greater identity with the corporation, partly because of the degree of upward mobility to managerial positions for engineers in corporations. See also Wilensky, The Professionalization of Everyone? (1964-65), 70 Am. J. of Sociology 137 at 153 and Q. Johnstone and D. Hopson, Lawyers and Their Work (New York: Bobbs-Merrill Co., 1967) at 241 discussing the relative degree of professional identification between in-house corporate lawyers and lawyers in private practice.

13. The Public Accountants Council can discipline the licensee for "conduct disgraceful to him in his capacity as a public accountant" (Public Accountants Act, supra, note 11, s. 18 (1)). It has prescribed Rules of Professional Conduct for licensees. In addition, the other voluntary associations (the ICAO, the Society of Industrial Accountants of Ontario, and the Certified General Accountants Association of Ontario) which prescribe qualifications for accountants have Codes of Ethics and mechanisms for disciplining members.

The O.A.A. Registration Board has made regulations pertaining to the discipline of members pursuant to s. 10 (1) (f) of the Architects Act.

The APEO can define "professional misconduct" pursuant to s. 7 (1) (d) of the Professional Engineering Act and has done so in R.R.O. 1970, Reg. 691, s. 8 -

> "For the purposes of the Act and the regulations, "professional misconduct" means,
>
> (a) gross negligence;
> (b) infamous, disgraceful or improper conduct in a professional respect, including any violation of the Code of Ethics prepared and published by the Council pursuant to section 9 of the Act;
> (c) incompetence;
> (d) conviction of a serious criminal offence by a court of competent jurisdiction;
> (e) continued breach of the regulations or by-laws of the Association."

It has also issued a Code of Ethics pursuant to s. 9 (1) of the Act.

The Law Society can discipline if a member is "guilty of professional misconduct or of conduct unbecoming a barrister and solicitor" (Law Society Act, supra, note 11, s. 34). It has approved a Professional Conduct Handbook, which is currently being integrated with the Canadian Bar Association's Code of Professional Conduct.

See generally B. J. Reiter, Discipline as a Means of Assuring Continuing Competence in the Profession and Tables of Discipline Activities by Profession, Working Paper #11 prepared for the Professional Organizations Committee (1978).

14. Stuart Thom, former Treasurer of the Law Society of Upper Canada, does not believe that they are frequent, as the Law Society has not been made aware of them. He believes that a salaried professional can comply with the Code of Ethics (Interview, August 9, 1978).

    In contrast, Bruce Henderson and Ian Wilson of the Society of Ontario Hydro Professional Engineers and Associates (SOHPEA) believe that ethical problems are on the increase, due to an increased awareness of the public interest among engineers, at least at Ontario Hydro (Interview, August 15, 1978). While they have not experienced problems in the past, they feel that concern about ethical issues is rising among their members.

15. Henderson and Wilson (supra, note 14) felt that the presence of a supportive employee association or trade union was necessary to allow employees to confront the employer on ethical issues.

16. Interview with Douglas Rutherford, former President of the Association of Government Lawyers of Ontario (August 8, 1978). See also, Johnstone and Hopson, supra, note 12 at 205.

17. Section 3 of the Code of Ethics issued by the APEO Council reads:

> "A professional engineer shall:
>
> (a) act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential any information obtained by him as to the business affairs, technical methods or processes of an employer and avoid or disclose any conflict of interest which might influence his actions or judgment;
>
> (b) present clearly to his employers the consequences to be expected from any deviations proposed in the work if his professional engineering judgment is overruled by non-technical authority in cases where he is responsible for the technical adequacy of professional engineering work;
>
> (c) have no interest, direct or indirect, in any materials, supplies or equipment used by his employer or in any persons or firms receiving contracts from his employer

unless he informs his employer in advance of the nature of the interest;

(d) not tender on competitive work upon which he may be acting as a professional engineer unless he first advises his employer;

(e) not act as consulting engineer in respect of any work upon which he may be the contractor unless he first advises his employer; and

(f) not accept compensation, financial or otherwise, for a particular service, from more than one person except with the full knowledge of all interested parties."

While several of the subsections refer to fiduciary duties, subsection (b) is of especial interest, as it addresses the question of professional judgment.

In addition, Section 2 of the Code, "Duty of Professional Engineer to the Public" states, inter alia, that the professional engineer shall:

"(e) make effective provisions for the safety of life and health of a person who may be affected by the work for which he is responsible; and at all times shall act to correct or report any situation which he feels may endanger the safety or the welfare of the public;

(f) make effective provision for meeting lawful standards, rules, or regulations relating to environmental control and protection, in connection with any work being undertaken by him or under his responsibility."

18. See, for example, the Code of Ethics for practising architects in Ontario. No provision speaks directly to salaried architects, and only the general s. 59 can be of any assistance. It reads:

"A member shall perform with reasonable skill and good judgment professional services

> requiring the application of the art and science of architecture in the design, erection and completion of buildings in their entirety, and shall not knowingly contravene or attempt to contravene applicable building laws and regulations."

19. Those who perform "public accountancy" within the meaning of that term in the Public Accountancy Act must be licensed (as explained, supra, note 2). The Architects Act (supra, note 11) prohibits "holding out" and defines the scope of the practice of architecture in s. 16 (3) -

> "Without restricting the generality of sub-sections 1 and 2, any person or corporation who prepares, or offers to prepare for a fee, commission or other remuneration any sketch, drawing or specification for a proposed building structure or for a structural alteration of or addition to any existing building structure, when such proposed work is to cost more than $10,000, shall be deemed to hold himself or itself out as an architect."

The scope of the "practice of professional engineering", which requires licensing, is set out in s. 1 (1) (i) in the following words -

> "practice of professional engineering" means the doing of one or more acts of advising on, reporting on, designing of or supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges, cranes, drainage works, irrigation works, waterworks, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works. power transmission systems, steel, concrete or reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric or electronic apparatus, electrical or electronic communication systems or equipment, mineral property, mining machinery, mining development, mining operations, gas or oil developments, smelters, refineries, metallurgical machinery, or equipment or apparatus

> for carrying out such operations, machinery, boilers or their auxiliaries, steam engines, hydraulic turbines, pumps, internal combustion engines or other mechanical structures, chemical or metallurgical machinery, apparatus or processes, or aircraft, and generally all other engineering works including the engineering works and installations relating to airports, airfields or landing strips or relating to town and community planning."

The prohibition on unauthorized practice under the Law Society Act (supra, note 11) is found in s. 50 (1) -

> "Except where otherwise provided by law, no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold himself out as or represent himself to be a barrister or solicitor or practise as a barrister or solicitor."

20. See Federation of Engineering and Scientific Associations (hereinafter FESA), Preliminary Brief to the Professional Organizations Committee (January 7, 1977) at 2, 4. FESA refers to an opinion of APEO lawyers to the APEO on June 17, 1976 which dealt with enforcement of the Professional Engineers Act:

> "In the past the Association has not been actively involved in enforcing the provisions of the Act as they apply to the performance of in-house engineering services by employee-engineers.
>
> ... The Association has not been involved in examining work being performed in-house to determine if such work constitutes "the practice of professional engineering" and must be done by a member."

21. This discontent was brought to a head by the decision of the Canada Labour Relations Board in Association of Engineers of Bell Canada and Bell Canada, Montreal, [1976] 1 Can. L.R.B.R. 345 (Can.), discussed infra, ch. 4. Some effort has been made to address this problem by the APEO. See infra, p.69.

22. See Chapter IV, infra. See also D. Fraser, "Bicameralism and the Professional College" in Trebilcock and Slayton eds., The Professions and Public Policy, (Toronto: U. of T. Press, 1978), p. 279 at 282.

23. The enforcement problems facing the regulatory bodies will be discussed infra at 73.

24. The Registration Board is made up of nine members, five elected and four appointed (three from the authorized degree-granting institutions and one appointed by the Lieutenant-Governor-in-Council from a list of practising architects).

25. There are forty-four Benchers. Forty are elected by members: twenty from the Metropolitan Toronto region and twenty from the area outside Metropolitan Toronto. Four lay benchers are appointed by the Lieutenant-Governor-in-Council.

26. The APEO Council is made up of twenty-three elected and appointed members. There are two councillors-at-large and ten regional councillors elected, the latter representing the five regions into which the province has been divided. Five councillors are appointed by the Lieutenant-Governor-in-Council, who are qualified in the five fields of engineering (civil, mechanical, electrical, chemical and metallurgical, and mining and geology). Two other councillors are appointed by the Lieutenant-Governor-in-Council: a lay representative and a practising lawyer.

    The more responsive attitude of the APEO Council was noted in interviews with Chris Bailey, FESA (August 10, 1978); D. Ferguson and A. C. Cagney, APEO (August 17, 1978); Bruce Henderson and Ian Wilson, SOHPEA (August 15, 1978).

27. See footnote 20, supra.

28. This was the major problem in the Bell Canada case mentioned in note 21.

29. Supra, note 20.

30. These are found in (1978), 38 Ont. Digest, No. 1, 13-14 under the title "Delegation and Supervision of Engineering Work". The criteria, which are in fairly general words, are as follows:

    (a) In general, engineering work of a non-recurring nature or work requiring a novel application of engineering principles may be delegated to persons who are not members or licensees of the

Association only under the close and continuing personal direction and supervision of a member or licensee of the Association who has accepted responsibility for the engineering work in his capacity as a professional engineer.

(b) Engineering work involving the routine application of well-known principles and procedures may be delegated to persons who are not members or licensees of the Association under the direction and supervision of the member or licensee of the Association who has accepted responsibility for the engineering work in his capacity as a professional engineer. The direction and supervision must be exercised at a level of care, skill and attention satisfactory to the responsible professional engineer and shall be such that he is able to maintain an adequate knowledge and control of the engineering work for which he has accepted responsibility in his capacity as a professional engineer.

31. Interview with Gordon McHenry, General Manager of Personnel; A. O. Allen, Director of Staff Relations; and Rae McClusky, Management and Professional Staff Relations, Ontario Hydro (August 10, 1978). Of course, the fact that a body like the APEO provides a valuable certification service does not necessarily mean that it should also be given the authority to regulate exclusive right to practise. See infra, Chapter IV.

32. As noted by the Quebec Office des Professions in The Evolution of Professionalism in Quebec, (1976), p. 52 -

> "Indeed, very often the employer, for his own objectives, carries out functions of discipline competence assessment and continuing education in a more direct and sustained way than could be done by a professional corporation. In this context, the professional corporation mechanism only serves to complement other mechanisms aimed at defending consumer interests."

33. See, for example, the Law Society Act, R.S.O. 1970, c. 238, s. 50 (1); the Professional Engineers Act, R.S.O. 1970, c. 366, as am. S.O. 1972, c. 45, s. 27; the Architects Act, R.S.O. 1970, c. 27, s. 16.

34. Interview, Henderson and Wilson, SOHPEA (August 15, 1978).

# CHAPTER IV

# ADDRESSING THE PROBLEMS OF THE SALARIED PROFESSIONAL: ALTERNATIVE MODELS

In this chapter, an effort will be directed to assessing four methods for accommodating the concerns raised in the previous chapter: collective bargaining, facilitation of individual bargaining, exemption of salaried professionals from the licensing regime, and restructuring the regulatory body.

## A. COLLECTIVE BARGAINING FOR SALARIED PROFESSIONALS

One of the major areas of concern for salaried professionals is economic. Salaries are a source of complaint, either because they do not measure up against those of others in the profession or because the salaries of the profession as a whole are perceived as inadequate. Collective bargaining with their employer is a traditional method by which employees try to increase their remuneration, and it is inevitable that salaried professionals will consider its appropriateness for their needs. The salaried professional who does so will find that the legislative treatment accorded collective bargaining by professionals varies across jurisdictions (that is, federally and in the ten provinces) and even within jurisdictions (in the differing treatment of public

sector and private sector employees).

(1) Collective Bargaining for Professionals at Present

In Ontario salaried members of several professions face legislative obstacles, should they desire to engage in collective bargaining. The Labour Relations Act of Ontario[1] specifically excludes certain professionals from the definition of "employee" under the Act, thus denying them access to the machinery of collective bargaining:

> S. 1 (3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee
>
> (a) who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity....

Thus practising lawyers and architects, among others, are excluded from the coverage of the Act. So, too, were members of the engineering profession until 1970, when their exclusion was removed from s. 1 (3)(a). At the same time, a special provision was added to provide for bargaining units consisting solely of professional engineers, unless a majority expressed a wish to be included in a unit with other employees.[2] While professional engineers can now organize in the private sector in businesses which fall within Ontario jurisdiction under the Constitution, they cannot do so in the public sector in Ontario.

The Crown Employees Collective Bargaining Act specifically excludes engineers, along with certain other professions, from the definition of "employee".[3] Employed accountants, not being mentioned in the exclusions in s. 1 (3)(a) of the Ontario Labour Relations Act, can engage in collective bargaining.

In contrast to the Ontario legislation is the labour legislation at the federal level, which is much more amenable to collective bargaining by salaried professionals. The Canada Labour Code applies to a "federal work, undertaking or business", which brings within that Act activities subject to federal jurisdiction under the British North America Act. This would encompass broadcasting, interprovincial transportation, and banks, among others.[4] The Canada Labour Code gives a broad definition to the term "professional employee" and makes provision for special bargaining units to include such professional employees.[5] Similarly, professional employees in the federal public service are allowed to bargain collectively under the Public Service Staff Relations Act. That Act provides for certification of bargaining agents to represent various "occupational groups" within designated "occupational categories".[6] One of these occupational categories is entitled "scientific and professional" and includes groups such as lawyers, engineers, and auditors.[7]

Therefore, in Ontario some of the professional employees with whom this study is concerned can bargain collectively, depending on the status of their employer (private or public sector; "federal work, undertaking or business" within the Canada Labour Code). Inevitably the question must be raised: what is the rationale for allowing some professional employees to bargain collectively, while others are prevented from doing so? The practice of excluding professional employees from labour relations legislation varies across Canada. Three provinces - Alberta, Prince Edward Island and Nova Scotia - have a provision similar to that in Ontario, excluding the professions of law, medicine, dentistry and architecture from their collective bargaining statutes. In addition, these provinces exclude engineers.[8] The remaining provinces of British Columbia, Saskatchewan, Manitoba, Quebec, Newfoundland, and New Brunswick, allow professional employees to bargain collectively, often including special measures for separate professional bargaining units.[9]

Historically, there seems to be no rationale for excluding professional employees from collective bargaining. It was not until 1948, when the Industrial Relations and Disputes Investigation Act was enacted, that certain professional groups were excluded from collective bargaining.[10] Prior to that date, professional groups had been allowed to bargain collectively, whether under the first piece of labour relations legislation in

Ontario, the Collective Bargaining Act, 1943,[11] or its successor, the Ontario Labour Relations Board Act (1944),[12] or the federal P.C. 1003 which superseded provincial labour legislation during the Second World War.

From 1948, the treatment accorded professional employees by labour relations legislation has varied across jurisdictions and within jurisdictions. Various rationales for the exclusion of professionals have been articulated, but the major reason seems to be that members of the traditional professions such as law, medicine, and dentistry were felt to be adequately protected by the regulatory powers of their professional associations, and therefore without the need of collective bargaining to protect their economic interests.[13] There may have been other reasons as well: a feeling that the interests of professionals had been inadequately protected in broad-based bargaining units under early legislation; a professional belief that collective bargaining is unethical or undignified; and a lack of interest in collective bargaining because of the tendency of professionals to identify with management.[14]

These rationales will be discussed in further detail below in the context of the discussion whether unionism and professionalism are incompatible. Before leaving the discussion of collective bargaining as it now exists for professional employees, it is important to describe the extent to which collective

bargaining rights are exercised by the professionals in Ontario who are the focus of this study and have the right to bargain.

While professional engineers in Ontario can exercise collective bargaining rights under both the Ontario Labour Relations Act and the Canada Labour Code, the number who have done so is small. Under the Canada Labour Code, one bargaining agent, at Atomic Energy of Canada Ltd., has been certified.[15] The bargaining unit of approximately 410 employees is a mixed one, containing professional engineers, scientists, librarians and public relations personnel. Under the Ontario Act only one bargaining agent has been certified, at Northern Electric Ltd., for a unit of about 34 professional engineers.[16] An interim certificate has been granted to a mixed bargaining unit at SPAR Aerospace.[17] In addition, the Professional Institute of the Public Service of Canada is certified under the Public Service Staff Relations Act to represent the engineering and land survey group of the Scientific and Professional Category. This does not exhaust the number of professional engineers involved in collective bargaining or in some form of collective negotiations. Several bargaining agents have been accorded voluntary recognition by their employers, including those at Ontario Hydro, The Computing Devices Company, and Canadian Standards Association.[18] Engineers at several other companies also engage in some form of informal collective negotiation with their employer without meeting the technical requirements

for certification or voluntary recognition under labour relations legislation - for example, engineers at Canadian General Electric, Peterborough; Westinghouse Canada Ltd.; and Bell Canada Ontario.[19]

Of the groups mentioned, approximately 6,118 employees come within the scope of the statutory collective bargaining regimes. It is difficult to calculate the extent of collective bargaining in Ontario. Not all of those in the groups described above are in Ontario, for the occupational groups under the Public Service Staff Relations Act are Canada-wide. Excluding the engineering group under that Act, there would be 4,814 in the units described, but not all of these employees are professional engineers. Several of the units are mixed, including scientists and other types of employees.[20]

As to other professional groups who are eligible to organize, figures on organization are difficult to obtain. Accountants are not included in the professional exclusion clauses of any of the labour relations legislation mentioned. Unless they are excluded because they exercise managerial functions or work in a confidential capacity in relation to labour relations, they can be expected to be included in white collar units.[21] To determine the extent to which they are involved in collective bargaining is impossible.

There is a bargaining unit of lawyers and another of architects represented by the Professional Institute of the Public Service under the Public Service Staff Relations Act.[22] In Ontario, lawyers employed in a professional capacity are ineligible to bargain collectively. In a recent decision involving Parkdale Community Legal Services, the Ontario Labour Relations Board held that articling law students are eligible to bargain collectively. They do not fall within the professional exclusion in s. 1 (3)(a) of the Labour Relations Act because they are not yet "members" of the legal profession, nor are they entitled to practise law.[23] The Labour Relations Board adopted a similar strict interpretation of the legal exclusion in the York University case, in which the faculty of Osgoode Hall Law School tried to invoke the professional exclusion in order to be excluded from the university-wide faculty bargaining unit.[24] The Board excluded the law school faculty from the wider bargaining unit on the basis of lack of community of interest, but refused to find that faculty members were employed in a professional capacity. "Employed in a professional capacity" seems destined to be interpreted strictly, so as to include only those actually doing the traditional work of the members of that profession - for example, the lawyer engaged in legal work for clients. This would mean that some licensed members of the professions excluded by s. 1 (3)(a) of the Ontario Labour Relations Act could

be included in bargaining units if their work did not fall within the scope of "employment in a professional capacity."

(2) Is Collective Bargaining Compatible with Professionalism?

In Chapter III, the predominant concerns of the salaried professional were said to be economic return and professional recognition. Employed within a bureaucracy, whether corporate, government, or large professional firm, many professionals will find their individual bargaining power relatively ineffective because of their fungibility and lack of leverage. The traditional response for blue collar workers, when faced with the problem of inequality of bargaining power, is collective action, as a way to establish countervailing power to bargain with management. With salaried professionals, the question which must precede adoption of collective methods is whether unionization and professionalism are compatible.

Salaried professionals often feel that unionization is unethical.[25] The traditional image of the professional is of one whose loyalty is to his client. He does not expect to work regular hours and collect overtime, and his main objective is to serve the client's best interests. Unionism seems to conflict with this ideal in that it may require the employee to engage in strike activity, thus jeopardizing the client's

interest. It may also cause significant rigidity in the structuring of the employee's work by specifying strict job classifications and work assignment rules within the collective agreement. This may affect the quality of service to the client as well as threaten the autonomy to which the professional aspires.

Whether such fears are justifiable is debatable. A strike need not necessarily jeopardize the client's or the public's interests. Even if it were possible to reach a consensus on the controversial question of what constitutes a public interest dispute, a strike by many professional employees in a company or in government would have little impact beyond inconvenience for the public or government. For example, a strike by architects or engineers might only delay the implementation of a construction project. Of greater concern might be a strike by a lawyer which jeopardized a client's case because of time limits in a statute or deadlines in negotiations. The solution is not to reject collective bargaining, but to consider the viability of mechanisms other than the strike as a method for dispute settlement, as discussed below.

Fear about loss of autonomy may be an empty one for professionals already employed in large-scale bureaucracies. Already job classification and specialization are a reality for them.

Unionization may be a forward step, allowing the employee, through his bargaining representative, to have some input into the design of the classification system and some method for grieving if the classification is improperly applied.

More significant to a discussion of unionization among professionals is the reality of psychological barriers to unionization. Many professional employees believe that unionization is undignified, and feel that their status would be lowered by resort to collective action.[26] Furthermore, many professional employees identify with management rather than "labour". Frequently they are engaged in advisory roles to management, and usually they see themselves as upwardly mobile to positions in management. Unionization is therefore resisted, for endorsement may threaten promotion. In addition, many see no need for unionizing, feeling that individual bargaining is sufficient to protect their interests. If not sufficient, the costs of the adversary atmosphere that almost inevitably accompanies unionization outweigh any potential benefits deriving therefrom.[27]

A further psychological barrier to unionizing is the perceived threat to individualism, particularly to recognition of individual merit.[28] While large scale organizations may reduce autonomy, there is some opportunity for individuals to seek

recognition of merit through merit pay or promotions. Unions must inevitably reduce these opportunities for some. Those who might otherwise have exercised some individual bargaining power will lose that leverage, unless the union agrees, in the collective agreement, to leave some room for individual bargaining.[29]

While the barriers to collective bargaining seem formidable, several arguments can be raised in favour of the compatibility of unionization and professionalism. First, as several commentators have pointed out, collective action by professionals to promote economic self-interest is no novelty, as the tariffs of fees established by professional associations evidence.[30] More importantly, collective action may be a necessary way to increase bargaining power for professionals in a large organization, and it may benefit them in monetary terms. Actual bargaining power will depend on the extent to which the bargaining agent can restrict the supply of employees (thus raising the price for those employed), the extent to which other employees or processes are substitutable for professional services, and the extent to which the employer can pass on increased costs to his customers.[31] From the employee's perspective, the likelihood of added economic benefits resulting from collective action would be the prime motive for unionization.

There is an additional way in which unionization is not only compatible with professionalism, but indeed fosters it. That is through the opportunity to negotiate "professional clauses" in collective agreements. A number of observers have stated that "professional bargaining" differs in nature from collective bargaining in blue collar settings. While economic issues are obviously of primary importance, they are not the only important matters on the bargaining table. Professionals are concerned about career development, the protection of professional standards, and recognition of their professional status through mechanisms for consultation with management.[32] The result is a concerted effort to obtain collective agreement provisions which deal with these concerns.

The success of these efforts can be seen by examining a few collective agreements. The agreement between Computing Devices Company and the Salaried Employees Alliance contains provisions for career development which include employer reimbursement of tuition fees and books for "approved conferences" and a joint consultation mechanism.[33] The agreement between the Treasury Board of Canada and the Professional Institute of the Public Service protects publication rights, in that the employer agrees not to withhold permission to publish unreasonably.[34] Other provisions that might be included could deal with patent rights for inventions; the right to refuse to apply the engineer's stamp; the right to refuse to do work that does

not comply with the Code of Ethics.[35] Such clauses have the effect of improving employer recognition of professional status, as well as providing some protection for the ethical standards of the profession. Both are important goals of professionals.

One might raise two questions about the effectiveness of unionization in promoting professionalism through negotiation. First, how likely are professional clauses to make their way into collective agreements? One would suspect that in eleventh hour bargaining, professional clauses would be traded off for monetary benefits, especially in the case of a new union still trying to prove to its members the merits of collective action. In fact, under the Public Service Staff Relations Act, a stubborn management really need not give way on such issues if the employees have chosen the arbitration route, as opposed to the strike route, as a dispute settlement mechanism under the Act.[36] Arbitration, under that Act, is restricted to resolution of four issues: leave entitlements, rates of pay, hours of work, standards of discipline and "other terms and conditions of employment directly related thereto".[37] Nevertheless, professional clauses are being included in collective agreements in the federal public service and elsewhere, perhaps as a result of management recognition that the interests of their professional staff are different from those of their blue collar workers. Management resistance to professional clauses does

arise, but with regard to certain types of professional demands. Union efforts to preserve"professional work" for professional employees (thus preventing the employer from assigning tasks traditionally performed by professionals to non-professionals) are resisted.[38] Sometimes, resistance is directed to demands for joint consultation mechanisms.[39] In each case, one can see employer efforts to preserve the prerogative of management to assign work and to make decisions.

The further question with regard to professional clauses is addressed to the legitimacy of trade unions protecting professional ethics, instead of the regulatory bodies which supervise the professions. Although a salaried professional can theoretically seek the intervention of his regulatory body when faced with an ethical problem at work, it is likely that a bargaining agent which represents him would be more accessible to him and perhaps more effective. As mentioned earlier, regulatory bodies are reluctant to intervene in situations which have a strong aura of employer-employee relations. In addition, their tools of assistance are often limited to moral suasion against the employer. A trade union which represents the employee has an obligation to act on his behalf; it is accessible; and its political success depends on efficacious service to its members. Therefore, it can potentially give significant assistance to employees in maintaining ethical standards.[40]

In doing so, the union can complement and reinforce the self-regulatory system, rather than conflict with it.

Nevertheless, unionization will not be a panacea for the professional employee who raises ethical issues. An employee who refuses to act because he or she feels that the conduct is unethical may still be subject to discipline for insubordination. In the recent artitration case involving Mount Sinai Hospital nurses, the arbitrator, Brandt, rejected a defence by several nurses in the Intensive Care Unit that they refused to admit a new patient because they feared for the safety of other patients. They felt that endangering existing patients would be unethical. Brandt focussed on the possibility that the nurses would be civilly liable for negligence, rather than on the possibility that they would be in breach of their Code of Ethics. Finding that the possibility of civil liability was uncertain, he held that they should "obey now and grieve later".[41] The decision is unfortunate in that it fails to address the question of the effect of a Code of Ethics and the threat of professional discipline.

In summary, it would seem that unionization and professionalism are not incompatible concepts, and indeed that unionization can foster professionalism. Nevertheless, profound psychological barriers to unionization persist among professionals, and

it would be unwise to ignore the effect that these beliefs would have on the decision to resort to collective bargaining, should professional exclusions be removed from labour relations legislation in Ontario.

(3) The Likelihood of Unionization

The number of professionals presently involved in unions or collective negotiations in Ontario is difficult to estimate, although an effort was made to do so earlier. In addressing the treatment of salaried professionals it must be asked whether the number engaged in collective action is likely to expand in a significant way if professional exclusions are removed.

The outlook is not positive for union growth. The best evidence to support this prognosis is found in the case of the engineers. Estimates have been made that approximately 20,000 engineers are eligible to bargain collectively under existing labour legislation, after excluding those performing management functions or engaged in a confidential capacity in matters relating to labour relations. Of these, a significant number are not attractive prospects for unionization, being in firms of less than twenty engineers. According to Chris Bailey of the Federation of Engineering and Scientific Associations, that leaves about 10,000 engineers available for unionization - out of about 40,000 in Ontario.[42] Already about half of those 10,000 are organized.

(We noted earlier that bargaining units involving Ontario engineers comprise just over 6,000 employees, including a number of non-engineers as well as engineers in other provinces.)

In the United States, where engineers can bargain collectively, approximately 5% of the professional engineers are members of unions, and they bargain for about 7% of the engineering population. The United Kingdom picture is similar - about 6% of eligible engineers are members of the U.K. Association of Professional Engineers.[43]

The possibility of widespread professional adherence to unions is further belied by the psychological barriers referred to earlier: the identification with management, the desire for upward mobility, and the fear of adversarial relationships. Such barriers must be especially strong among employees within professional firms, who see themselves as potential partners and who see their employee status as temporary. Furthermore, the attitude of the professional associations, which ranges from outright opposition to, at most, lukewarm acceptance of collective bargaining, must have an impact on the members' acceptance of collective bargaining.[44] In fact, Kleingartner, in his studies of professionals and unionization, notes a tendency among professionals to prefer their professional associations as bargaining agents or representatives, rather than trade unions.[45] The attitude of these associations to collective bargaining then becomes especially important in

assessing the willingness of members to unionize.

A final indicia of the likelihood that professionals will unionize comes from studying data on unionization in general in Canada. Recent figures on trade union membership show a decline in the rate of expansion in union membership in the private sector. Growth is shown in the white collar sector (in which professionals are categorized), and particularly in the public and quasi-public sector.[46] One might infer that unionization among salaried professionals will occur predominanly among those in government employment. This may not be true for engineers, for Chris Bailey of FESA is of the opinion that growth in unionization among engineers will be in the private sector and particularly in the aircraft industry, where there are large concentrations of engineers. Nevertheless, if one were to try to come to a conclusion as to the extent of professional unionization, one would have to say that widespread professional unionization is unlikely in light of the fact that trade union membership has remained at a fairly stable percentage of the workforce in the last decade. This conclusion is reinforced by the slow rate of unionization among engineers.[47]

This is not to say that salaried professionals should <u>not</u> be allowed to unionize. To the contrary, it would seem that they may have good reason to do so and should be given that

option to exercise. The next section of this paper will deal with problems under current legislation if professional exclusions are removed. The significance of this discussion has been to indicate that there will be a need for mechanisms complementary to collective bargaining to serve the interests of those salaried professionals who choose not to bargain collectively or who are prevented from doing so by legislation.

## (4) Collective Bargaining by Professionals Under Present Legislation

If professional exclusions are removed from labour relations legislation, some significant problems exist in the establishment of a collective bargaining relationship. These include management exclusions, definition of the appropriate bargaining unit, selection of the appropriate bargaining agent, recognition of individual merit, and use of the strike mechanism. Each of these will be discussed, using illustrations from present bargaining relationships where relevant.

### (i) Management Exclusions

One of the major problems facing salaried professionals who wish to bargain collectively is the provision, common to most pieces of labour relations legislation, which excludes employees engaged in managerial functions or in a confidential capacity

in matters relating to labour relations.[48] In an industrial setting, in which this exclusion has traditionally been applied, those engaged primarily in the supervision of other employees and with effective control over their employment relationship are excluded from collective bargaining, as are those having decision-making authority with regard to policy in the firm.[49] Recognizing the reality of fragmented decision-making in large operations, the Labour Relations Board concentrates on whether the individual makes "effective recommendations", that is, decisions which are likely to be acted upon by superiors.[50]

A potential problem arises in applying such tests to salaried professionals, who often by the nature of their expertise, training, and role in a firm exercise a great deal of discretion. Yet at the same time, such individuals are employees vulnerable to pressure from senior management, and so in need of collective bargaining.

Different ways can be seen to resolve the problem of the managerial exclusion. To some extent, the problem has been diffused by the flexible interpretation which labour boards have been adopting in professional settings. Thus, the Canada Labour Relations Board has noted:

> Typically, a salaried professional employee, will normally enjoy a substantial amount of discretion in the exercise of his function,

> may be called upon to make decisions within his area of expertise and may, because of that expertise significantly influence corporate decisions of great importance.

In light of that reality, the Board concluded that it must make a distinction between "effectively recommending" and "deciding", searching for the real allocation of decision-making authority in the particular enterprise.[51] Therefore, while many professional employees will have a great deal of discretion in designing programmes or in recommending corporate action, they will not be automatically excluded if the real decision-making authority lies with persons above them.

But even a flexible approach to the managerial exclusion will fail to keep many professional employees in the bargaining unit. Such employees may have many interests in common with those in the bargaining unit and share a common viewpoint as professionals. In fact, there seems to be a perception among salaried professionals that they share a common interest as professionals rather than a perception that some professionals are "management" and others "employees". For example, senior management level lawyers (i.e., Legal Directors) are active in the Association of Government Lawyers of Ontario. In Ontario Hydro, some senior executives retain membership in SOHPEA even after they have been promoted out of the bargaining unit.

There is a way to avoid the detrimental effect of the labour relations legislation on such individuals - and that is by organizing outside the legislation. This is what the professional and mid-management employees at Ontario Hydro have done, gaining voluntary recognition for a bargaining unit of mid-management employees, the majority of whom are professional engineers.[52] Through voluntary recognition, the Society of Ontario Hydro Professional Engineers and Associates (SOHPEA) has been able to include those who have common interests as professional and management employees. Certification would have prevented this. Of course, the ability of a bargaining agent to gain voluntary recognition, in the way SOHPEA has done, depends on its implicit bargaining power. It must either have the ability to obtain certification if the employer rejects voluntary recognition, or it must be dealing with an employer who sees a benefit in joint consultation with employees. Not all unions will have this option of voluntary recognition.

The present solution to the managerial exclusion problem for those who must pursue the certification route is the flexibility of the labour boards. Yet there is argument that further protection is needed through a narrower definition of "managerial functions" in a professional context. The rationale for excluding those exercising managerial functions is to avoid conflicts of interest between the employee's duties

to his employer, as part of the management or supervisory team, and his loyalty to his union and fellow union members. A redefinition of managerial functions could prevent a professional from being included in a bargaining unit of professional employees if he has supervisory authority over them, but not if his supervisory authority is exercised over other employees. This would be designed to prevent conflicts of interest. Similarly, those acting in a confidential capacity in relation to labour relations of other professionals could be excluded, again to prevent conflicts of interest. The phrase "confidential capacity in matters relating to labour relations" extends to those acquiring information important to management's personnel functions. Therefore, those engaged in personnel functions, such as salary negotiations or grievance settlement, with regard to other professional employees should be excluded from collective bargaining.

The approach suggested is analogous to the treatment of "supervisory employees" under the Canada Labour Code, who can be included in a separate bargaining unit.[53] Admittedly, at some point, a labour relations board must draw a line to exclude professionals who exercise senior management functions. Where that line is drawn will depend on the facts of each case.

(ii) The Appropriate Bargaining Unit

The design of the bargaining unit to which professional employees should belong is another difficult problem. There are several possibilities: a bargaining unit composed solely of employees in one profession; a multi-professional unit; or an all-employee unit.

If labour relations legislation does not specify a particular type of bargaining unit for a group of employees, the Labour Relations Board must decide what is the "appropriate bargaining unit."[54] Traditionally, there are two types of bargaining units - the industrial unit, comprising all employees of an employer in a given plant or at a given location, and the craft unit, comprised of employees with special or technical skills. The boards, in deciding the appropriate bargaining unit, look for a "community of interest" among the employees in the proposed unit. A jurisprudence has developed in which the boards look to factors such as the nature of the work performed, the conditions of employment, the skills of employees, and the functional coherence and interdependence between groups of employees.[55] In applying these factors, the boards have developed certain standard bargaining units, such as the separate white collar or office unit in an industrial plant.[56] But labour boards are greatly concerned about certifying a large

number of bargaining units in an enterprise, for the resulting fragmentation can increase the costs of negotiation, lead to jurisdictional disputes between units, weaken employee bargaining power if the units are small, and cause successive disruptions of production. As a result, the boards will opt for wider units in an employer's enterprise, unless it is shown that the interests of employees seeking exclusion cannot be accommodated.

The question for purposes of this study is whether professional employees could argue for a bargaining unit separate from other employees, absent any special statutory provision. In one recent decision, the Ontario Labour Relations Board rejected an argument for a separate bargaining unit based largely on claims of professional status by physiotherapists and occupational therapists.[57] It has not shown much sympathy for professional groups in the medical area who claim separate bargaining units. In the Stratford General Hospital case, the Board discussed and rejected the possibility of dividing a bargaining unit along the lines created by professional licensing legislation. It was held that the licensing statute is enacted for the purpose of protecting the public and is irrelevant for labour relations purposes.[58]

Absent special legislative provisions dealing with separate professional bargaining units, one might suspect that removal of the professional exclusions in the Ontario Labour Relations Act would result in professional employees being mixed with non-professionals in all-employee units. Adams has noted that professional workers are not presently represented on labour relations boards, and "it is all too easy to characterize the claims of professionals for separateness as elitist and snobbish."[59] The result is that board concerns for fragmentation outweigh professional employees' concerns for recognition of their particular interests. It might be asked whether this is a bad result. It would seem to be so with many professionals who feel that their concerns are different from those of blue collar workers, and who may resist the traditional tactics that they feel go with trade unionism.[60] One could expect a significant amount of discontent, should professional employees be grouped in all-employee units. In fact, it has been suggested that part of the motivation for professional exclusions from labour legislation after World War II came from discontent over inclusion in all-employee units.[61]

A possible legislative response to avoid the danger of board inclusion in an all-employee unit would be to specify by statute separate bargaining units for professionals. In Ontario,

professional engineers must be included in a bargaining unit composed solely of professional engineers, although they can be included in a bargaining unit with other employees if a majority of the professional engineers indicate that this is their wish.[62] The Labour Relations Board has taken a rigid approach in its treatment of this provision. In the Northern Electric Company case, the Board refused to include several employees who were not licensed professional engineers in a bargaining unit with professional engineers.[63] The nine employees performed similar functions and were graded by the same grading system as professional engineers. Of the nine, four were "Engineers-in-Training", and two were eligible for APEO membership. Nevertheless, the Board held that s. 6 (3) was mandatory and prevented mixed units. -

> In this regard, we reject the submissions of the respondent to the effect that the language of Section 6(3) with respect to such a 'mixed unit', could not reasonably be interpreted to include a bargaining unit consisting primarily of professional engineers with a smaller group of technical persons working in an engineering support role.[64]

The respondent seemed to have focussed on the concluding words of s. 6(3), arguing that these words allow the Board to include professional employees in a mixed unit if the professionals agree. The Board's decision seems to reject this possibility and leave the proviso open only if the professional

engineers are to be included in an all-employee unit. From one perspective, the decision is sensible, for it meets the concerns of professional employees engaged in collective bargaining. The separate bargaining unit should allow the professional employees maximum opportunity to focus on their particular problems - salary comparisons with members of their profession in other markets; programmes for career development; and devices to meet ethical problems. More important from the professionals' viewpoint would be the preservation of their particular identity, which could be threatened by inclusion in an all-employee unit.

Yet, from another perspective, the Northern Electric Company decision may be regarded as an unfortunate one, for it fails to consider the common interests between the specially-trained employees seeking inclusion in the bargaining unit with the professional engineers. Their pay scales are common, and their work similar. Excluding them increases the possibility of jurisdictional disputes over work assignment.

A further concern with this approach to mandatory separate units for professionals arises from its effect on the viability of establishing bargaining relationships. Bargaining units in Ontario are usually established for the employees of the employer at one location. Often bargaining units restricted to professionals in one profession will be very small, and consequently

both difficult to organize and weak in bargaining power. The federal public service is organized along craft (or more accurately, professional) lines, with the professions assigned to particular occupational groups. These groups constitute viable bargaining units because they are Canada-wide in coverage. This would not be the case for the professional employees of most private sector employers.

A more attractive possibility than one-profession bargaining units is a statutory provision along the lines of that in the Canada Labour Code, which allows for the grouping of members of several professions in one bargaining unit. While the main policy is to include only professional employees in a bargaining unit, the Canada Labour Relations Board can refuse to do so, if it feels that the unit is inappropriate for collective bargaining. The Board can include several professions within a unit, or include non-professional employees who perform the same functions as the professionals in the professional bargaining unit.[65] Such an approach can promote the viability of bargaining in an enterprise where there are professional employees from several different professions. It also recognizes the common interest of professional workers which separates them from blue collar or administrative support staff. Grouped in one bargaining unit, they can develop provisions for career development or protection of ethical standards which are not

likely to concern non-professional employees.[66] Recognition of the common interests of professional employees from several backgrounds led Ontario Hydro to expand the coverage of its bargaining unit in 1976 to include mid-management employees as well as professional engineers. The unit now includes economists, auditors, and scientists.[67] At the same time, the Canada Labour Relations Board can take note of the community of interest between professionals and non-professionals performing the same function, and could design a unit to include non-professionals who seek inclusion in the bargaining unit in a case like Northern Electric.

The multi-professional and mixed bargaining unit approach of the Canada Labour Code seems to be the most satisfactory, allowing for separate professional bargaining units where viable, yet recognizing that professional groups have common interests and outlooks which allow them to bargain together.

The application of the professional employee provisions in the Canada Labour Code has left something to be desired, at least from the perspective of professional engineers. In the Bell Canada case, the first case in which certification was sought for a unit composed solely of professional employees, the Canada Labour Relations Board dismissed an application for certification for a bargaining unit of professional engineers and architects. The Board held that the professional employees

in question did not fit within the definition of "professional employee" in s. 107(1) of the Canada Labour Code.[68] Management led evidence to show that those possessing engineering and architecture qualifications (554 in number) performed the same functions in the "Engineering Family" as 1,800 other employees performing management functions. While the Board's reasons are not as clear as they might be, the conclusion appears to be that the professional engineers seeking certification are not professional employees within s. 107(1) because other employees without professional qualifications perform the same tasks and functions. Therefore, the engineers cannot be said to be "applying specialized knowledge" in the course of their employment.[69]

The Board went on to discuss the bargaining unit provisions of s. 125(3), even though there was no need to do so if the employees were not "professional employees" under the Code. Finding that there was constant interchange of functions between professional engineers and non-professionals, the Board held that a unit of professional engineers and architects was not appropriate for collective bargaining. The employer's concerns about fragmentation and the failure of the unit to take into account the structure and organization of the enterprise were major considerations affecting the Board's determination.[70]

The Bell Canada decision failed to address the question of whether the professional engineers should be denied separate bargaining rights because the employer's method of organizing the workplace fragmented tasks formerly reserved to professionals (perhaps even infringing on the unauthorized practice provisions of regulatory legislation). It failed to address the question of whether the professional engineers should be allowed to group together to bargain over work assignment issues, such as delegation to para-professionals. In saying that "the legislation contemplates that only professionals who normally perform the type of work which is usually reserved to members of the profession may avail themselves of these provisions,"[71] the Board adopted an approach that protects the status quo with regard to work assignment in a particular enterprise. Yet work assignment may be a basic concern of the professional, and one of the major reasons for organizing.

In summary, the flexible approach to bargaining unit determination provided in the Canada Labour Code is to be preferred, although it may not meet the concerns of employed professionals if applied by a labour board unsympathetic to professional interests.

(iii) The Appropriate Bargaining Agent

At one time, an important issue associated with collective bargaining for professional employees was the appropriateness of allowing their professional associations to bargain for them.[72] While Kleingartner has noted that professional employees prefer representation by their professional bodies to that by trade unions,[73] the professional associations uniformly reject such a role.[74] Indeed, it would be impossible for the self-regulatory associations to harmonize their role as protectors of the public interest with the role of a bargaining agent in promoting economic self-interest.

Those professional groups which have organized have shown a preference for bargaining agents specialized in professional bargaining. Thus, the majority of occupational groups organized under the Public Service Staff Relations Act are represented by the Professional Institute of the Public Service. This institution has been representing professional employees in the public service, first informally and now as a bargaining agent, since 1920.[75]

Engineering groups in Canada tend to be represented by associations unique to their place of employment, rather than by affiliates of traditional trade unions. Most of these groups are affiliated with an umbrella body, the Federation of

Engineering and Scientific Associations. FESA is composed, at present, of fifteen groups across Canada and has about 5,200 members. Of these, 65-70% are professional engineers.[76] It provides information for members engaged in collective bargaining and tries to promote collective bargaining (through formal or informal means) among employee engineers.

It can be expected that future organizational activity would follow the traditional path, with professional employees seeking out their own organizations, rather than established trade unions, because of the professional reluctance to use what are perceived as traditional trade union tactics.

(iv) Individual Merit

Another concern in professional bargaining is the recognition of individual merit. Unionization is perceived as having a levelling effect, since individual bargaining is forbidden. Statutory provisions designate the trade union as the exclusive bargaining agent,[77] and cases such as McGavin Toastmaster and Le Syndicat Catholique show that the employer cannot by-pass the bargaining agent and negotiate with individual employees.[78]

Such a problem is not insurmountable. Collective bargaining provides flexibility, allowing the bargaining agent and the employer to tailor the agreement to meet their particular needs.

Provisions can be made for the recognition of individual merit in the collective agreement through employer decisions about merit pay. The collective agreement can explicitly grant the employer the power to bargain with individual employees with regard to specified matters. For example, at Ontario Hydro, decisions as to merit pay and promotion through the ranks are left to individual bargaining with management, with SOHPEA (the bargaining agent) approval. SOHPEA bargains only for the salary ranges to go with the jobs.[79] Similar flexibility is seen in the collective agreement between the Canadian Broadcasting Corporation and the Association of Canadian & Radio-Television Artists. The collective agreement provides that nothing prevents a performer from obtaining rates or conditions more favourable than the minimums specified in the agreement.[80]

(v) Dispute Settlement Mechanisms

The final problem in collective bargaining for professionals lies in the decision as to method of dispute settlement, sparking once again the debate on the strike versus arbitration. At present, professional employees who are organized under either the Ontario Labour Relations Act or the Canada Labour Code can resort to the strike as a method to obtain their demands. Federal public servants can choose either the strike or arbitration as a method of dispute settlement,[81] and the

majority of the occupational groups in the professional and scientific category have chosen arbitration.

The fact that the majority of professional employees in the federal public service prefer arbitration as a dispute settlement mechanism, or the fact that professionals in a large bargaining unit such as Ontario Hydro prefer arbitration,[82] does not mean that professional employees should be prevented from using the strike option. The debate as to the efficacy of arbitration in contrast to the strike has been and continues to be a heated one.[83] So long as there is no conflict between professionalism and the strike, and in most situations there is not, it is best left to the particular bargaining unit to decide the preferred method of dispute resolution. Where the professional bargaining unit is small and without any significant power to affect the employer's operations, arbitration is probably the more realistic alternative.[84] Still, the decision to resort to arbitration should be left to those involved.

(5) Alternative Forms of Collective Action

The discussion to this point has focussed on problems associated with collective bargaining by professional employees. Throughout the discussion, it should have become clear that while professional employees should be allowed to bargain collectively, many will resist traditional forms of collective

bargaining. There are various ways to deal with this reality. One is through alterations to existing institutions and statutes to take cognizance of the special interests of professional employees. For this reason, the suggestions dealing with statutory provisions for professional bargaining units and the redefinition of management exclusions are made.

In addition, appointments to the Labour Relations Board should be made which provide some input from the professional workers. A special panel of the Board, for professional employee issues, similar to the construction industry panel of the Ontario Labour Relations Board, would be much more acceptable to professional employees in deciding bargaining unit and management status questions. The presence of a "professional employees" panel would not ensure that decisions such as that in Bell Canada would not be made, but it would provide some assurance that professional interests as well as traditional labour relations issues such as fragmentation are considered.

Yet inevitably it must be asked whether special labour legislation should be enacted for professional workers, similar to that for teachers or the police.[85] The Society of Professional Engineers and Associates at Ontario Hydro, in lobbying for the right to bargain collectively during the 1960's, joined with several other groups in 1966 to press for a Professional

Negotiations Act. This proposed Act was tailored to meet some of the concerns about unionization expressed throughout this chapter. For example, all professional employees could bargain unless they had final authority with respect to the conditions of employment of professional employees or acted in a confidential capacity in matters of relations between professional employees and the employer. Dispute settlement was to be by arbitration. Individual autonomy was protected by providing that a professional staff association bargained for an employee only if he designated and authorized it to do so. Individuals could bargain with their employer with respect to issues not covered by the staff agreement. Finally, union security provisions were barred.

The need for such special legislation is open to question. First, many of the problem areas, such as the management exclusion, could be resolved by amendment to existing legislation and flexible administration by a restructured labour relations board.[86] Secondly, the efficacy of this type of legislation might be open to doubt, for the extreme emphasis on voluntariness may result in severe problems with regard to free-riders. Their lack of financial support would threaten the professional association's viability.

The Professional Negotiations Act was an effort to foster development of new approaches to employer/employee relations for professional employees. Their advanced education, management orientation, and desire for autonomy demand new mechanisms for employer/employee relations which feature more joint consultation than has been the case with blue collar workers. Some groups have already achieved these objectives without legislative support. Ontario Hydro has achieved a unique relationship based on ongoing negotiations between a Joint Society-Management Committee. Only salary issues are finally settled in the traditional way of negotiation on a yearly basis; all other issues are dealt with as they arise. Efforts have been made to promote joint consultation between the employer and professional groups in the federal public service, with varying degrees of success largely depending on the personalities involved.[87] University faculties have long operated on a collegial basis. It has been suggested that mandatory consultation mechanisms would be the ideal solution to harmonize the conflict of professionalism and bureaucracy.[88]

While consultation is indeed the goal of the professional, it is difficult to see how it can be obtained through legislative action. It will either result from enlightened personnel policy on the part of management or the exercise of employee bargaining power (explicit, as with certified trade unions, or

implicit, as with unions and associations voluntarily recognized). The major legislative response necessary at this time is amendment to labour relations legislation to remove obstacles to collective bargaining by professional employees.

## B. INDIVIDUAL BARGAINING FOR SALARIED PROFESSIONALS

To this point, the focus of discussion has been collective action by salaried professionals, either through collective bargaining under labour relations laws or through a form of joint consultation devised by the professional group and the employer. Yet one must recognize that many professional employees will not engage in such collective negotiations, either because of the psychological barriers to collective action mentioned earlier, or because of legal barriers such as management exclusions from collective bargaining, or because of the impossibility of group action because of the small number of professionals in a workplace. Such employees may still experience many of the concerns of their counterparts who do organize - feelings that remuneration is inadequate or that ethical standards and professional judgment are not being adequately considered. The individual who raises such questions with his employer is more vulnerable than the unionized employee, for he is without the protection of the commonplace collective agreement clause that there shall be no discipline or discharge without just cause. Ultimately,

he is vulnerable to discharge, with only common law remedies such as damages for wrongful dismissal and statutory notice provisions, such as those in the Employment Standards Act,[89] to protect him.

His needs are, then, threefold. He may need legal protection from employer action if he raises ethical issues. He may need moral support from some interest group to assist him in identifying and raising ethical issues with the employer, and finally, he has information needs as to comparable salaries and alternative jobs available to assist him in bargaining with the employer.[90]

Some of these needs are met by existing organizations in the profession, with the salaried engineer the beneficiary of the most services. The APEO sponsors two important services for salaried engineers: two salary surveys and an employment advisory service. The salary surveys are of two kinds. The most important is the July Survey of Employers, which provides data on annual salaries of professional engineers according to responsibility levels and according to the year of graduation by responsibility level. The APEO has devised a five-grade classification guide of responsibility levels for engineers. A second survey, the Canadian Professional Engineers Membership Salary Survey, is conducted by the APEO in December of each year,

looking at rate of remuneration, year of graduation, source of income, and employment status. It is the July salary survey which carries the greatest weight with employers, since the data come from salary administrators. It plays an important role in the setting of individual engineers' salaries.[91]

A further service provided to employee engineers by the APEO is the Employment Advisory Service, established in 1961. It assists members in preparation of resumés, through job referrals, and through publications.[92] The EAS sees its role as complementary to the Technical Services Council, the prime placement agency for professional engineers, which is a service supported mainly by business and industrial companies.

In addition to these two services to employee members, the APEO sponsored the creation of a Salaried Engineers Division (SED) in December 1976. The APEO provided funding for a two-year period, with the SED expected to establish an independent identity by the end of 1978. The role of the SED is still in the process of definition. It is expected to fulfill a service function for members, but debate continues over whether it should serve as an interest group or as a broadly based service organization.[93] If it is to serve as an interest group, independence from the APEO is necessary, for the self-interest focus would conflict with the public interest orientation which the regulatory

body should possess. In the interim, there are debates as to who should be eligible for membership: all salaried engineers or just those without a supervisory role in relation to other professional engineers. The present By-Law No. 1 establishing the S.E.D. creates two classes of membership. A person is not eligible for membership if he has "final authority to engage or release from employment other Salaried Engineers" (Art. III, s.2). Associate members can have such authority, but are denied voting powers or the ability to hold office.

The SED to the present has been preoccupied with organization, although it did commission an evaluation of engineers' salaries.[94] In the future, it is perceived that it could have a valuable role in assisting employees with ethical problems, by giving them support in approaching their employer when the APEO would be reluctant to do so.

Services comparable to those provided for employee engineers are not found in the other professions. Efforts have been made among some lawyers to establish self-interest groups, for example, the Association of Government Lawyers of Ontario, the Crown Attorneys Association, and the recently formed Corporate Lawyers section of the Canadian Bar Association. Each group is aimed at promoting the interests of its members, although avoiding the aura of collective bargaining. The Law Society of Upper

Canada provides no special services to its employee members, nor does the counter-part for the architectural profession, the Ontario Association of Architects.

Individual bargaining, to be effective, requires some support from self-interest groups, particularly in the form of salary information. The question is whether such support should come from the self-regulatory body of the profession. In the case of the engineers, much of the economic information and assistance needed by members has come from the APEO.[95] One might question whether this type of activity is compatible with the regulatory body's mandate to supervise the profession in the public interest. Such concern with the economic interests of members seems to run counter to the public interest. No doubt it is for this reason that the APEO has insisted that its Salaried Engineers Division become an independent entity.[96]

The formation of self-interest bodies to assist the employed professional is not something which can or should be achieved through legislation. The regulatory bodies can assist the employee members in contacting each other and in establishing the organization, but the impetus for forming and maintaining such bodies must ultimately come from the employed professional who perceives a need for such assistance.

The only legal change which might be considered is some type of job protection for a professional employee who refuses to perform what he considers to be illegal or unethical acts. A cause of action for abusive discharge could be devised, in which an employee could obtain both punitive and compensatory damages from an employer who discharged him for protesting about conduct which he perceived as unethical or illegal.[97] One might query the efficacy of such a remedy, however. The employee, while compensated for unjust discharge, is without a job. Furthermore, problems of proof as to the employer's motive could be severe, particularly if the self-regulatory body showed the reluctance noted elsewhere to enter into disputes that involve employer-employee relations. Only in the most blatant case, where the employee was being coerced into doing something clearly illegal, would intervention from the self-regulatory association and the courts be likely to aid the individual. In most day-to-day situations, the employee is probably better served by a union that can intercede on his behalf or, possibly, an interest group such as the SED which can use moral suasion against the employer.

## C. EXCLUSION FROM THE SELF-REGULATORY FRAMEWORK

The discussion to this point has assumed the continued membership of the salaried professional in the self-regulatory

body. It might well be asked whether such membership is necessary - is he adequately protected by collective bargaining and individual bargaining (since collective bargaining will never be available to all salaried professionals)? And is the public interest adequately safeguarded if some or all employed professionals are no longer licensed?

In effect, the conclusion underlying a positive answer to these questions is that self-regulation by the profession is more trouble than it is worth in the case of salaried professionals. To resurrect some of the issues from Chapter III, the employer in a large organization may run into problems with the profession's rules against unauthorized practice. The salaried professional may face ethical problems when his employer orders him to do something which he feels contravenes his Code of Ethics. Refusal to act may make him vulnerable to discipline by the employer, yet compliance may leave him open to disciplinary action by his professional association. Furthermore, he is required to pay fees for a licence to a body which provides him with little in the way of services and which is primarily concerned with private practitioners and their service to the individual client.

The suggestion, then, might be made that employers of professional employees in industry and government be given the option of an "industrial exemption". The industrial exemption

is found in the licensing or registration laws for professional engineers in many states in the United States. The industrial exemptions vary from one state to another, but they often specify that engineers providing service within a corporation or government need not be registered.[98] This exemption may be qualified by a requirement that an engineer in "responsible charge" be registered if there is any risk to public health and safety (which would arguably include employee health and safety).[99] Otherwise, the employer can choose to employ licensed or unlicensed individuals to do the work that is reserved for licensed professionals in private practice.

A de facto industrial exemption arises in Ontario with regard to many professionals employed by the federal government. While many choose to maintain their professional licences, their employer has denied their need to do so.[100] The rationale would seem to be that institutions and personnel of the federal government are immune from provincial legislation, such as that regulating the professions, because of the constitutional rule of interjurisdictional immunity.

The question then becomes whether such industrial exemptions should be generally available for employers of professionals, whether in industry, government, or even in a professional firm. To answer that question, one must confront the issue of the

purpose of self-regulation for professional groups which was first raised in Chapter I of this paper. At that time, it was noted that powers of self-regulation are conferred on professional bodies in an effort to protect the public interest.[101] The benefits of self-regulation outweigh any consequent costs, because the profession has both the necessary expertise to supervise its members and the advantage of being able to rely on their group loyalty to promote compliance with minimum professional standards.

The paradigm for such professional self-regulation in the past was the private practitioner who offered services to numerous clients for a fee. Such clients lacked the expertise to evaluate the services provided; hence, self-regulation by the profession protected the public interest. Does this hold true for the employed professional who has only one client - a corporation, government body, or a more senior professional? Do such clients possess a degree of knowledge and sophistication adequate to protect them without the intervention of self-regulatory bodies? Furthermore, do people other than the employer benefit from the licensing of employed professionals?

The answers to such questions are not easy. Starting with the employers' interest, it is clear that the sophistication and knowledge of employers will vary with their size and the

number of professional employees whom they employ. For example, the senior partners in a law firm should have little difficulty evaluating the services of junior lawyers or paraprofessionals performing legal tasks. Certification by the Law Society or supervision through disciplinary sanctions will not be needed. This may not be the case for a corporate employer who wishes to hire one staff lawyer, or a small electrical company wishing to hire a few engineers. Even a large company employing many professionals, such as Ontario Hydro with its 2,500 plus engineers, can be assisted in evaluating qualifications by the self-regulatory body of the profession.[102]

But if employers need "protection", the question is "how"? They may feel that they can benefit from a process of certification by the regulatory body, since the individual employer then need not acquire the expertise to evaluate qualifications when hiring. This is especially important in engineering, where approximately one-third of the engineers are trained outside Canada.[103] But it could be argued that the regulatory body need not <u>license</u> such employee engineers and supervise their continuing activities. All that is needed is an initial certification - in effect, a variation on the reserve of title system.

This last-mentioned system, used in the Province of Quebec, confers exclusive right to use a professional title, but it does not confer exclusive right to practise. All that it

signifies is that a person has reached a given state of competence. According to the Quebec Government, such a reserve of title system is adequate to protect the public in activities where professionals "work almost exclusively in a structured environment, with recruiting procedures, with standards being set and approved by organizations, etc."[104]

At first glance, a certification system might seem adequate to protect the employer's interest without imposing the inflexibility that is alleged to accompany exclusive right to practise systems. The employer who does not wish to go to the expense of acquiring expertise to evaluate job qualifications can insist that job applicants be certified by the appropriate regulatory body. This is often done at present by employers of individuals engaged in certain types of jobs, such as dietitians or chartered accountants.

There are problems with a certification system, some of which would also accompany the industrial exemption. These are particularly significant for the professional association. First, the association may encounter problems in recruiting members or in exercising disciplinary control if members can leave the association and continue to practise their profession as employees.[105] The APEO, with its large number of employee members, might be especially affected by a change in the licensing

system. The result might be financial difficulty which might hamper the Association in performing its regulatory functions with regard to those in private practice.

Secondly, the professional associations with a significant mix of employed and self-employed members will have to consider whether to devise a two-tiered regulation system. They will have to confront various questions. For example, if there is a demand for a certification system by a large number of employers, the professional associations must decide whether to establish qualifications for employees different from those seeking to enter private practice. The difficulty is probably most pressing with regard to lawyers, where qualifications to practise are oriented to private general practice. The employer is probably most concerned about evaluating university qualifications. Still, one might argue that if the employer demands certification of an employee's qualifications, it is certification by prevailing association standards and not by some lesser standard.

A problem with certification and industrial exemption arises with regard to the effect on professional mobility. Should a professional association have "staleness" rules (as does the Law Society of Upper Canada) which require licensing within a specified period after university graduation, the person who

initially fails to obtain a licence may be trapped in his job. This would reduce mobility between the employed and self-employed sectors, which could have serious economic consequences for the employed. Bargaining power could decline as they were locked into their jobs. Obviously, the danger of rigidity and lack of mobility can be avoided by individual decision to maintain the professional licence during employment, even when an industrial exemption is available to the employer.

A further problem with a certification system or industrial exemption is the effect on continuing competence. While either system can ensure initial competence, there is no assurance of either continued competence or adherence to professional standards. The "sophisticated" employer, experienced in the field in which the professional employee works, can evaluate the work provided by his staff - for example, the senior partner in a professional firm or the corporation executive who is of the same profession as his professional staff. Other employers may not be in this position. Yet this is not an argument against industrial exemptions from the employer's viewpoint. If they take comfort from the fact that the professional employee, through the licensing system, is still subject to the professional body's scrutiny with regard to his professional conduct, they can insist that their employees be licensed.

The discussion to this point has centered on the need for licensing professional employees in order to protect their client, the employer. Those employers who feel the need of such protection can demand that employees be licensed. But it is not only the immediate client whom professional self-regulation is designed to protect, however. There is a further public or third party interest which may require protection through regulation of employed professionals, for such third parties might be injured by the incompetence of professional employees. This group includes the other employees of a particular employer, who might be injured, for example, if an engineer designed or permitted the construction of unsafe products or structures. It takes in, as well, the general public who deal with the employer and who may suffer from an unsafe product or from failure to adhere to environmental or consumer safety laws. The work of employee engineers and architects will often have impacts on other employees and the public; that of the salaried lawyer, while perhaps of less immediate or dramatic impact, may affect the public as well. In contrast is the situation of the management accountant, for example, whose information is provided just to management to aid in decisions. There is no danger to third parties, as with design or advisory work by engineers, architects and, to a lesser extent, lawyers.

Inevitably the question must be asked whether professional licensing is necessary to protect these third party interests. What about market pressures to control the employer in the private market, or the risk of political defeat to control governments? Alternatively, why not use government inspection and criminal sanctions to ensure that private employers comply with laws pertaining to public health and safety?

Dealing with the market argument first, it might be suggested that an employer will ensure that his professional staff is adequately trained and performs in a manner that ensures compliance with standards pertaining to public health and safety. The employer who fails to do so will theoretically encounter buyer resistance and reduced demand for his product. He may be subjected to civil actions for damages because products are faulty in design or fail to meet prescribed standards. Unfortunately, this is the situation only in a market where the buyer has adequate information as to the quality of the goods produced so that he can make choices between competing products or refuse to buy. It also assumes that there are no externalities, in the sense that all costs of production figure in the final price of the particular goods. This is frequently not the case. It may be so with some professional firms dealing with sophisticated clients,[106] for such clients can evaluate the quality of the ultimate product such as the quality of the legal advice provided

by a law firm or the quality of design provided to a large contractor by a consulting engineering firm. Therefore, market pressures on the employer are likely much more effective than they would be against a corporation manufacturing a variety of consumer goods. Thus, the employer in a professional firm can be expected to scrutinize the quality of his subordinates' work. While this seems to be a probable conclusion, it is really not these professional employees whom one would expect to be excluded from the regulatory regime. After all, as "embryo partners", they would both wish to be licensed and ultimately they will have to be licensed. It is likely that their employers will demand licensing. It is the efficacy of market pressures on the employed professional in a corporation providing goods or services to the public who is the real concern. It is unlikely that the market alone will be effective in most situations to protect the public interest adequately. Aside from the major problem for the individual buyer in acquiring information as to the quality of goods and services (including the professional employees' input into the production), other problems exist. Where the employer is a monopolist, controlling the supply of goods on the market, market pressures will be ineffective to ensure the professional employees act in the public interest. When the employer is a large corporation, it can often evade compliance with the myriad of environmental and consumer

protection laws because of the unlikelihood of being discovered or because fines are so low as to become a cost of doing business. Professional employees may be expected to promote the employer's interest in such activity. Buyer resistance is unlikely because of lack of information as to alternatives. Often costs associated with production, such as pollution or damage to employee health will not figure in the cost of goods, so that buyer resistance is ineffective as a means of control.

Professional licensing for the salaried employee in the corporate firm is not a magic formula to ensure that public health and safety will be miraculously protected. Obviously, many employers wish to comply with the applicable laws, and, as mentioned above, may prefer their professionals to be licensed for the employer's protection. The "reasonable" employer in a negligence action may well find it a good defence to say that he employed professional employees of certified competence. But there will be situations in which corporate employers run close to the line in questions of public health and safety. Then professional licensing can complement other methods of protecting the public interest, since the employee is subject to outside scrutiny and potentially to discipline if he acts unethically.

It might be suggested that government inspection, civil liability, and criminal sanctions be used to protect the public health, leaving professional licensing redundant. But such alternatives are far from satisfactory. The costs of government inspection are high, and their efficacy often open to question. Criminal sanctions are often after-the-fact, while the concern with regard to public health and safety should be prevention. Internal responsibility systems within a corporation are necessary to ensure that standards of public health and safety are met,[107] and the presence of licensed professional employees, who are cognizant of professional standards with which they have a duty to comply, can be a beneficial way to promote the functioning of internal responsibility systems. The threat of discipline from the professional body is only one part of the incentive to comply. The consciousness of "professionalism" that goes with the licence and professional training provides much of the incentive.

As to the feasibility of political controls to ensure that the public interest is served by professionals employed in government, the arguments are weaker than with market pressures against corporations. The size of the bureaucracy, the lack of information as to its performance, and the unlikelihood of either politicians or the public knowing of actions that could harm the public make political controls an ineffective method

of ensuring performance in the public interest.

Therefore, from the public's perspective, there are good reasons for maintaining the professional employee within the licensing regime. The public interest in health and safety may need protection which the licensing of this group can promote, just as licensing does with regard to those in private practice.

While one might argue that only those professional employees need be licensed whose work affects public health or safety, as some of the U.S. industrial exemption provisions have done,[108] the definition would be a difficult one to draft. The concept of "public health and safety" is a necessarily expanding one, and should probably bring within the licensing scheme most professionals working within their discipline, even if for only one client.

Even if industrial exemptions were to be adopted for employed professionals, it is questionable whether the vast majority of those eligible for exemption would decide not to obtain a licence. In the United States, it is estimated that five times as many professional engineers are registered as need to be by law,[109] either because the individuals wish to maintain their registration to protect status or mobility, or because employers require registration. In the federal government in Ottawa, many

professionals maintain their licence despite their employer's insistence that they need not do so.[110]

In summary, it is recommended that the industrial exemption for professional employees, while it should be given serious consideration, should not be adopted because of the detrimental effect on the public interest in the areas of architecture, law and engineering.

## D. RESTRUCTURING THE REGULATORY BODY

If employed professionals are to remain as members of their professional associations, it may be necessary to make some changes in these bodies to ensure that the concerns of the employed professionals are met. At present, only the Association of Professional Engineers of Ontario makes any effort to recognize the special nature of these concerns. It has a Standing Committee of Council, the Employee-Engineers Committee, made up of one Council member and four or more members of the Association appointed by Council. Its function is to provide a forum for the discussion of the particular interests of the employed engineer.[111]

In addition to the Employee-Engineers Committee, the APEO provided encouragement in the formation of the Salaried Engineers Division described earlier. As well, the APEO incorporates

a special provision in its Code of Ethics detailing the duty of the employed engineer.[112]

No other regulatory body shows equivalent awareness of the employed professional, yet 16% of lawyers are employees and 53% of architects. Both of these bodies should be concerned with developing ethical rules to meet the problems of and provide advice on ethical matters to the employed members of the profession.

Furthermore, these associations should create some formalized structure to ensure that the employed members have a voice in the regulation of the profession. The best way in which to do this is by specifying a minimum number of representatives on the governing body who are employed in corporations or government. Such specification of constituencies is not new to professional self-regulation. The Council of the APEO is made up of both representatives of regions and of the various fields of engineering.[113] The Benchers of the Law Society of Manitoba include four lay members, a university bencher (representative of second and third year law students), a student in the Bar Admission course, and a law faculty member.[114] There is no reason why the Benchers of the Law Society of Upper Canada or the Registration Board of the Ontario Association of Architects should not include a specified number of "employed" representatives. The same specification need not be made for

the engineers, for the overwhelming number of employed members in the profession ensures that many of the Council members will be salaried.[115]

The problem remaining for these employed representatives is whether they should be compensated for their time. The OAA may find it difficult to do so because its financial position is adversely affected by the small number of members.[116] The Law Society could no doubt do so. It is recommended that consideration be given to remunerating employee members on the governing body for their time, if their employer refuses to do so.

Aside from representivity issues, the regulatory bodies must address the question of continuing competence of employed professionals, as part of a broader concern for continuing maintenance of standards throughout the profession. The professional employed in a corporation or government may feel the need for and benefit from continuing education courses relevant to his field. Should these be mandatory for the self-employed, many such courses would also be relevant for the employed. More important, though, is the question of competence when an employed professional moves from his field of employment, which is inevitably specialized, to self-employment. At present, there are no restrictions on his ability to do so, just as there

are none on the self-employed professional who decides to switch "specialties". The lawyer specializing in corporate tax for a corporation, like his counterpart specializing in tax in a law firm, who moves into general practice is in need of some type of refresher course to ensure competence. It is the obligation of the regulatory association to develop such courses for both employed and self-employed members. The question of recertification, it should be stressed, is one for all professionals involved in a given profession, and differential treatment should not be meted out on the basis of employment status.

## NOTES - CHAPTER IV

1. R.S.O. 1970, c. 232, as am. S.O. 1975, c. 76 and S.O. 1977, c. 31.

2. Id., s. 6 (3).

3. S.O. 1972, c. 67, as am. S.O. 1974, c. 135, s. 1 (1) (g) -

> "employee" means a Crown employee as defined in the Public Service Act but does not include,
>
> (iv) a person who is a member of the architectural, dental, engineering, legal or medical profession entitled to practise in Ontario and employed in a professional capacity...."

4. Canada Labour Code, S.C. 1972, c. 18, s. 2. The employees of federally incorporated companies are not governed by the Canada Labour Code unless the company is also a "federal work or undertaking" - for example, involved in broadcasting.

5. Id., s. 107 (1) -

> "a professional employee means an employee who
>
> (a) is in the course of his employment engaged in the application of specialized knowledge ordinarily acquired by a course of instruction and study resulting in graduation from a university or similar institution, and
>
> (b) is, or is eligible to be, a member of a professional organization that is authorized by statute to establish the qualifications for membership in the organization."

The bargaining unit provisions are found in s. 125 (3) of the Act and will be discussed infra. These provisions are an outgrowth of the recommendations of the Woods' Task Force on Labour Relations, whose Report (December 1968) stated:

"We recommend that the coverage of collective bargaining legislation be extended to employees who are members of licensed professions, provided the bargaining agent be a separate organization from the licensing body". (at 139)

6. R.S.C. 1970, c. P-35, s. 26.

7. Id., s. 2 and Canada Gazette, March 20, 1967. The list of occupational groups is found in Vol. 1 of the CCH Labour Law Reporter at 4099.

8. Alberta Labour Act, S.A. 1973, c. 33, s. 49(1)(h); Labour Act, R.S.P.E.I. 1974, c. L-1, s. 7(2); Trade Union Act, S.N.S. 1972, c. 19, s. 1(2).

9. Labour Code of British Columbia, S.B.C. 1973 (2nd Sess.), c. 122, as am. S.B.C. 1975, c. 33, s. 41; The Labour Relations Act, S.M. 1972, c. 75, as am. S.M. 1976, c. 45, ss. 1(t), 29(3); Industrial Relations Act, R.S.N.B. 1973. c. 64, ss. 1(1)(m)(u),39. Saskatchewan and Quebec allow professional employees to bargain, without making special provisions for them: Trade Union Act, 1972, S.S. 1972, c. 137; Labour Code, R.S.Q. 1964, c. 141, as am. S.Q. 1977, c. 613, s. 20.

10. S.C. 1948, c. 54, s. 2(1)(i).

11. S.O. 1943, c. 4. Under s. 5, professional employees were given differential treatment with regard to union security clauses in the sense that a union security clause could not apply to them. Otherwise, they were treated like other employees.

12. S.O. 1944, c. 29.

13. York University Faculty Association v. York University, [1977] O.L.R.B. Rep. 611 at 616.

14. Association of Commercial and Technical Employees, Local 1704, CLC v. Parkdale Community Legal Services, [1977] O.L.R.B. Rep. 661 at 662.

15. Canada Labour Relations Board File C-225. The Society of Professional Engineers and Associates, AECL Sheridan Park (SPEA), was certified December 9, 1974. The Board dismissed an application for certification for a unit of professional engineers at Bell Canada in a controversial decision on April 1, 1976. (Association of Engineers of Bell Canada and Bell Canada

Montreal, Quebec, [1976] 1 Cdn. L.R.B.R. 345).

16. The certification occurred December 20, 1974. See also, Northern Electric London Professional Association v. Northern Electric Co. Ltd., [1975] O.L.R.B. Rep. 164.

17. Interview, Chris Bailey, FESA (August 10, 1978).

18. For example: (a) the Society of Ontario Hydro Professional Engineers and Associates (SOHPEA) by Ontario Hydro., representing about 4100 engineers, scientists and mid-level management personnel; (b) the Salaried Employees Alliance by Computing Devices Co., to represent about 260 employees (professional engineers, plus the staff of the Estimating, Program Analysis, Contract Administration and Management Information Systems Departments); (c) the C.S.A. Professional Engineers' Group by Canadian Standards Association, representing all professional engineers at CSA Rexdale except those in a supervisory capacity.

19. See Federation of Engineering and Scientific Associations, Preliminary Brief to the Professional Organizations Committee, January, 1977, p. 1.

20. The figures were obtained from the Ontario Ministry of Labour's Collective Agreements Library (July 21, 1978). The breakdown of the size of bargaining units is as follows:

| | |
|---|---|
| Northern Electric | 34 |
| Computing Devices | 225 * |
| Ontario Hydro | 4145 * |
| AECL | 410 * |
| Federal Public Service | 1304 |
| | 6118 |

* Note: These units contain both professional engineers and non-engineers (e.g. scientists, mid-management staff). For example, the unit at Ontario Hydro contains about 2500 professional engineers.

21. See discussion of the managerial exclusion, infra, p.107 . The Auditing Group under the Public Service Staff Relations Act has 1054 employees.

22. The lawyers group, about 367 according to the Ontario Ministry of Labour figures, does not include most of the lawyers employed by the federal government. By s. 2 of the Public Service Staff Relations Act (supra, note 6), lawyers employed as legal officers

by the Department of Justice are specifically designated as "persons employed in a managerial or confidential capacity" and excluded from bargaining. The Department of Justice provides lawyers to most other departments through a secondment policy, so few can bargain collectively.

The architecture group has 130 members.

23. Parkdale Community Legal Services, supra, note 14.

24. York University Case, supra, note 13 at 614-16.

25. S. Goldenberg, Professional Workers and Collective Bargaining (Canada, Task Force on Labour Relations, Study No. 2, 1968) at 20.

26. Id. at 20.

27. Id. at 20; A.W.R. Carrothers, "Collective Bargaining and the Professional Employee" in J. Crispo, ed. Collective Bargaining and the Professional Employee (Toronto: Centre for Industrial Relations, 1966), p. 1 at 17; R. T. Woodworth & R.B. Peterson, ed. Collective Negotiation for Public and Professional Employees (Glenview, Ill.: Scott, Foresman & Co., 1969), ch. 1 at 9.

28. Crispo, supra, note 27 at 120.

29. G. Strauss, "Professional or Employer-Oriented: Dilemma for Engineering Unions" in Woodworth & Peterson, supra, note 27, p. 409 at 418. The union acquiring collective bargaining rights under the Ontario Labour Relations Act is the exclusive bargaining agent for all employees in the bargaining unit (supra, note 1, s. 59(1)).

30. Goldenberg, supra, note 25 at 96; Carrothers, supra, note 27 at 16; interview with Chris Bailey, FESA (August 10, 1978).

31. M. Gunderson, "Economic Aspects of the Unionization of Salaried Professionals" in P. Slayton and M. Trebilcock, eds. The Professions and Public Policy (Toronto: U. of T. Press, 1978) p. 247 at 256. Fraser & Goldenberg, in Collective Bargaining for Professional Workers: The Case of the Engineers (1974), 20 McG. L.J. 456, cite a study by Walton in the United States that shows unionization has aided engineers by reversing the narrowing trend between engineering and other salaries and offsetting the problems of mid-career obsolescence (at 463). See, also, G. Adams, "Collective Bargaining by Salaried Professionals" in Slayton & Trebilcock, The Professions and Public Policy, p. 264.

32. Interviews with Chesley Lockhart and K. Phythian of the Professional Institute of the Public Service (August 21, 1978); Chris Bailey, FESA (August 10, 1978); Ian Wilson and Bruce Henderson of SOHPEA (August 15, 1978).

33. Ontario Ministry of Labour file #381-023 (Seq.007809).

34. Id., #909-034 (Seq. 05356).

35. The collective agreement between the Society of Professional Engineers & Associates and Atomic Energy of Canada Ltd. (Sheridan Park) contains several important professional clauses - art. 16, "professional development"; art. 17, "professional qualifications and practice"; art. 18, "performance review and records". Article 17 is especially interesting and warrants quotation in full:

Article 17 - Professional Qualifications and Practice

17.01 The Company may require that certain positions be filled by professional employees holding membership in professional licensing bodies and that such members formally stamp documents prepared by or under the technical supervision of themselves in the manner prescribed by the relevant licensing body. Internal competition postings and external advertisements will state these mandatory requirements. The Company will ensure that such employees are provided with facilities and other support necessary to such professional practice.

17.02 With regard to Article 17.01, such professional practice shall be in accordance with the requirements and code of ethics of the relevant professional licensing body.

17.03 No employee is required to sign technical documents with which he disagrees as a matter of professional ethics.

17.04 Recognition of authorship or significant technical contribution by employees is given where practicable when documents are published in entirety or in part by the Company.

17.05 The Company will facilitate publication of appropriate reports or documents subject to any necessary restrictions of confidentiality.

Agreements between the Professional Institute of the Public Service and Treasury Board commonly include provisions dealing with paid educational leave, professional development and joint consultation. See, for example, the agreement for the Architecture and Town Planning Group (#909-05) or the Engineering and Land Survey Group (#909-919).

36. Supra, note 6. By s. 36, the bargaining agent must select either the conciliation board route (and ultimately the strike) or arbitration as a dispute settlement mechanism. This decision is recorded as part of the certificate of the bargaining agent.

37. Id., s. 70(1).

38. Interview, Chris Bailey, FESA (August 10, 1978).

39. Interview, Chesley Lockhart and K. Phythian, Professional Institute of the Public Service (August 21, 1978).

40. Representatives at SOHPEA believe that ethical issues have been arising more frequently in recent times. The reason lies in new awareness of ethical problems rather than an increase in questionable conduct (Interview, August 15, 1978). Any ethical problems encountered by employees have been resolved through informal discussion with management.

41. Re Mount Sinai Hospital and Ontario Nurses' Association (1978), 17 L.A.C. (2d) 242 (Brandt).

42. Interview, Chris Bailey, FESA (August 10, 1978). The fact that less than twenty engineers are employed in an enterprise would not, of course, preclude collective bargaining in either professional engineers' units or mixed bargaining units. It would, however, raise the costs of organizing and negotiating, thus discouraging unionizing.

43. Association of Professional Engineers, Intermediate Brief to the Professional Organizations Committee (February 1977), p. 31. See also W. D. Wood and P. Kumar, The Current Industrial Relations Scene in Canada, 1977 (Queen's Industrial Relations Centre) which states that organization among scientists and engineers in the U.S. has never been strong, fluctuating between 5% and 10% over the past twenty years (at IV-16).

44. The Law Society of Upper Canada can accept collective bargaining so long as there is no detriment to the solicitor-client relationship (Intermediate Brief to the Professional Organizations Committee (February 1977) pp. 27-28). The APEO is neutral, as is the Canadian Institute of Chartered Accountants, although the latter cautions its members about conflicts of interest and professionalism (CICA Handbook, pp. 73-74). The Society of Management Accountants feels that collective bargaining is incompatible with the management accountant's role (Brief to Professional Organizations Committee, October 31, 1977, p. 135).

45. A. Kleingartner, "Professional Associations: An Alternative to Unions?" in Woodworth and Peterson, supra, note 27 at p. 294.

46. Wood and Kumar, supra, note 43 at IV-5.

47. The rate of unionization in Canada is about 36.8% of the non-agricultural paid work force (id. at IV-1). The rate has stayed at about one third of the work force since the early 1950's. (See Woods' Task Force on Labour Relations, supra, note 23 at 24).

48. Ontario Labour Relations Act, supra, note 1, s. 1(3)(b).

49. Canadian Union of Public Employees, Local 1000 and the Hydro-Electric Power Commission of Ontario, [1969] O.L.R.B. Rep. 669.

50. Falconbridge Nickel Mines Ltd., [1966] O.L.R.B. Rep. 379; McIntyre Porcupine Mines Ltd., [1975] O.L.R.B. Rep. 261 at 289.

51. Society of Telephone Engineers and Managers and British Columbia Telephone Co., [1976] 1 Can. L.R.B.R. 273 (Can.). The Ontario Board has taken a similar flexible approach, looking for participation in policy formulation in a "meaningful and significant way" or a capacity to "affect" the employment status of a subordinate (Carleton University Academic Staff Association v. Carleton University, [1975] O.L.R.B. Rep. 500 at 512). See also, Hospital Board of Trustees of the City of London, [1973] O.L.R.B. Rep. 498; Toronto East General Hospital, [1974] O.L.R.B. Rep. 671 at 676; St. Peter's Hospital, Hamilton, [1975] 2 Can. L.R.B.R. 21 (Ont.); Faculty Association of Vancouver City College v. Vancouver City College, [1974] 1 Can. L.R.B.R. 298 (B.C.) at 300, 302.

52. Master Agreement Between Ontario Hydro and Society of Ontario Hydro Professional Engineers and Associates (SOHPEA), July 1, 1976. See also supra note 20.

53. The Canada Labour Code, supra, note 4, s. 125(4).

54. Ontario Labour Relations Act, supra, note 1, s. 6(1).

55. See Usarco Ltd., [1967] O.L.R.B. Rep. 526.

56. See G.W. Reed, White-Collar Bargaining Units Under the Ontario Labour Relations Act (Kingston: Queen's Industrial Relations Centre, 1969).

57. Health Sciences Association of the Regional Municipality of Niagara Falls v. Niagara Regional Health Unit, [1975] O.L.R.B. Rep. 376 at 382. The Board noted that nurses commonly bargain in separate units because they have established a past practice of bargaining separately from other employees engaged in direct patient care (at 383).

58. OPSEU v. Stratford General Hospital, [1976] O.L.R.B. Rep. 459 at 499.

59. Adams, supra, note 31 at 276.

60. The separate interest of professional workers and blue collar workers when bargaining was emphasized in several interviews with those involved in bargaining for professional employees: at Ontario Hydro with Gordon McHenry, A. D. Allen and Rae McClusky (August 10, 1978); with Henderson and Wilson of SOHPEA (August 16, 1978); with Phythian of the Professional Institute of the Public Service (August 21, 1978).

    The resistance to traditional bargaining tactics is shown in the terminology used in professional bargaining. For example, SOHPEA has "representatives", not stewards, and it is a "society", not a union. Similarly, the word "union" is avoided by the Professional Institute of the Public Service.

61. See Adams, supra, note 31 at 265. Examples of such all-inclusive bargaining units included British Columbia Distillery Co.Ltd.and Local 203 United Office and Professional Workers of America, 1947 CLLC ¶ 10,512 (Wartime L.R.B.); Quebec Federation of Professional Employees in Applied Science and Research, Unit 4, and Canadian Broadcasting Corp., 1946 CLLC ¶ 10,485 (Wartime L.R.B.). Units more tailored to professional interests are found in Toronto Hydro-Electric Employee-Professional Engineers, Unit 1 and Toronto Hydro-Electric System, 1947 CLLC ¶10,470; Quebec Federation of Professional Employees, Unit 3 and Bell Telephone Co. of Canada, 1947 CLLC ¶10,471.

62. Ontario Labour Relations Act, supra, note 1, s. 6(3).

63. Northern Electric London Professional Association v. Northern Electric Co. Ltd., [1975] O.L.R.B. Rep. 164.

64. Id. at 167.

65. Canada Labour Code, supra, note 4, s. 125(3). That section reads that the Board:

> "(a) shall determine that the unit appropriate for collective bargaining is a unit comprised of only professional employees, unless such a unit would not otherwise be appropriate for collective bargaining;
>
> (b) may determine that professional employees of more than one profession be included in the unit; and
>
> (c) may determine that employees performing the same functions, but lacking the qualifications of a professional employee, be included in the unit."

Manitoba and New Brunswick also provide for separate professional bargaining units, unless a majority of the professional employees express a desire to be included in a broader unit (Labour Relations Act, S.M. 1972, c. 75, s. 29(3); Industrial Relations Act, R.S.N.B. 1973, c. I-4, s. 1(5)).

66. While the professional groups under the Public Service Staff Relations Act bargain separately at present, Ken Phythian (in an interview August 21, 1978) said that joint bargaining for professional units was a future possibility, since the professional groups share common concerns about matters such as career development and joint consultation with management.

67. Interview, McHenry, Allen and McClusky, Ontario Hydro, (August 10, 1978).

68. Bell Canada, supra, note 15. Section 107(1) of the Canada Labour Code is quoted in note 5.

69. Id. at 353.

70. Id. at 353 - "Basically, the community of interest which might exist among the persons whom the applicant proposes to encompass in a broad bargaining unit, which might make them distinguishable from persons excluded from said bargaining unit would be based solely on personal qualifications and would have little or no basis in the organization of the enterprise."

71. Id. at 351.

72. See, for example, H. W. Arthurs, "Problems and Pitfalls from the Legal Point of View" in Crispo, supra, note 27, p. 97 at 101.

73. Supra, note 45.

74. See, for example, intermediate briefs to the Professional Organizations Committee from the Law Society of Upper Canada and the APEO and the Handbook of the CICA, supra, note 44.

75. The history of the organization is detailed by J. Swettenham and D. Kealy in Serving the State (Ottawa: Le Droit, 1970).

76. Interview with Chris Bailey, FESA (August 10, 1978).

77. Ontario Labour Relations Act, supra, note 1, ss. 35(1), 59(1).

78. Le Syndicat Catholique des Employés de Magasins de Québec Inc. v. La Compagnie Paquet Ltée. (1959), 18 D.L.R. (2d) 346 (S.C.C.); McGavin Toastmaster Ltd. v. Ainscough (1975), 54 D.L.R. (3d) 1 (S.C.C.).

79. See Master Agreement between Ontario Hydro and SOHPEA (July 1, 1976).

80. Ontario Ministry of Labour, file 543-021.

81. Public Service Staff Relations Act, R.S.C. 1970, c. P-35, s. 36. Certain designated employees, whose duties are necessary to the "safety or security of the public", are prohibited from striking (s. 79).

82. Under the Master Agreement between SOHPEA and Ontario Hydro, arbitration will be used only to settle salary disputes. In the past, the method used has been final offer selection. Other disputed issues can go to mediation, but management has the final say in the disposition of these non-salary issues.

83. See, for example, D. J. M. Brown, Interest Arbitration (Ottawa: Task Force on Labour Relations, Study No. 18, 1968).

84. For example, many professional engineers are involved in design or administrative functions. A strike by them could probably at most cause delay in the employer's operations.

85. The School Boards and Teachers Collective Negotiations Act, S. O. 1975, c. 72 provides a special legislative scheme for teachers which is under the supervision of the Education Relations Commission. See also the Police Act, R.S.O. 1970, c. 351.

86. Goldenberg (supra, note 25 at 102) reaches a similar conclusion.

87. Interview, Phythian and Lockhart, PIPS (August 21, 1978).

88. D. Fraser, Bicameralism and the Professional College, in Slayton and Trebilcock, supra, note 27, p. 279 at 286.

89. S.O. 1974, c. 112, as am. S.O. 1978, c. 2, s. 77.

90. Salaried architects have complained about the lack of salary surveys (See R. Kuris and T. Martin, Study of the Organization and Practices of the Architectural Profession in Ontario (Toronto: mimeo, 1974) at 25.)
Government lawyers have difficulty in obtaining salary information about other professions and other lawyers (Interview, D. Rutherford, Association of Government Lawyers of Ontario, (August 8, 1978)).

91. The July salary survey has been criticized for lack of representivity and possible inaccuracies in reporting (see W. Hastings, A Study of the Drift in Engineers' Income from 1961 to 1977, prepared for Salaried Engineers Division - APEO).

92. The EAS had received 499 applications for assistance as of July 22, 1976.

93. Interview, D.C. Ferguson, SED (August 17, 1978).

94. The Hastings survey, supra, note 91.

95. A similar development can be seen in Alberta. The Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA), in a Report of the Special Committee on Collective Bargaining (February, 1971) endorsed additional advisory

services by APEGGA (e.g., Salary surveys, counselling) to assist bargaining by voluntary groups and individuals (at 19). APEGGA sponsors a Career Development Program which provides salary information, a placement service, and professional development seminars.

96. Interview with A. Cagney, Executive Director, APEO (August 17, 1978).

97. See Note, A Remedy for the Discharge of Professional Employees Who Refuse to Perform Unethical or Illegal Acts: A Proposal in Aid of Professional Ethics (1975), 28 Vand. L. Rev. 805 at 829.

98. There are hundreds of different exemptions, as shown by a study by T. E. Stivers in August 1972, Comparison of "Exemptions" Under State Engineering Registration Laws.

99. See, for example, National Council of Engineering Examiners Model Law (1977), which defines "practice of engineering", which requires registration, in the following terms:

> S. 2(a)(4) Practice of Engineering
>
> The term "Practice of Engineering" within the intent of this Act shall mean any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineerings works and systems, planning the use of land and water, teaching of advanced engineering subjects, engineering surveys and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

There is no need to register employees or paraprofessionals of engineers if they are properly supervised. See s. 23 (c) - Employees and Subordinates:

> The work of an employee or a subordinate of a person holding a certificate of registration under this Act, or an employee of a person practising lawfully under Subsection (b) of this Section, provided such work does not include final engineering designs or decisions and is done under the direct supervision of and verified by a person holding a certificate of registration under this Act or a person practicing lawfully under Subsection (b) of this Section.

100. Interview, K. Phythian, PIPS (August 21, 1978).

101. Chapter I, supra, at 7. See especially C. Tuohy and A. Wolfson, "Self-regulation: who qualifies?" in Slayton and Trebilcock, supra, note 27, p. 111.

102. Interview, McHenry, Allen and McClusky, Ontario Hydro (August 10, 1978).

103. Id.

104. Quebec Office des Professions, The evolution of professionalism in Quebec (1976), p. 19, quoting the Minister of Social Affairs.

105. This has been the experience of some professional corporations in Quebec (id. at 20).

106. See, for example, D. Dewees, S. Makuch, and A. Waterhouse, An Analysis of the Practice of Architecture and Engineering in Ontario, Working Paper #1 prepared for the Professional Organizations Committee, (1978).

107. See, for example, Ont. Royal Commission on the Health and Safety of Workers in Mines (Ham Report - 1976), ch. 1.

108. See Model Law, supra, note 99.

109. Interview, A. Cagney, APEO (August 17, 1978).

110. Interview, K. Phythian, PIPS (August 21, 1978).

111. Its terms of reference, as set out in By-Law No. 1 of the APEO, are as follows:

The Employee-Engineers Committee shall:

(a) provide a forum for the discussion of the particular interests of the employed engineer;

(b) recommend to the Council policies and programs relative to the affairs and the interests of the employed engineer;

(c) encourage and assist chapter committees which may have similar interests or projects;

(d) advise the Council on matters relating to the practice of professional engineering by employed engineers, such as:

(i) technical and professional development;
(ii) continuing education;
(iii) utilization of technical manpower;
(iv) supply and demand for technical manpower;
(v) employment relationships and standards;
(vi) ethical practices; and

(e) with the approval of Coucil, undertake studies for the purpose of enlarging the body of knowledge of the foregoing fields.

112. Quoted, supra, Chapter III at note 17.

113. Described supra, Chapter III at note 26.

114. The Law Society Act, R.S.M. 1970, c. L100, as am. S.M. 1974, c. 2, ss. 7, 8.

115. The Council of the Ontario Association of Architects already provides for regional representation in the election of members. The Registration Board should also show a degree of representivity, (although of interest groups in the profession) because of its potentially important disciplinary function.

116. Professional Organizations Committee, Appendix C to the Research Directorate's Staff Study, "History and Organization of the Architectural Profession in Ontario," (1978) at 34.

# CHAPTER V

## SUMMARY AND CONCLUSIONS

The concern throughout this paper has been the interaction of professionalism and bureaucracy, particularly as it affects salaried professionals in the engineering, legal and architectural professions in Ontario. Theorists claim that the attributes of autonomy, the service ideal, and the application of specialized knowledge which go into the make-up of professionalism are incompatible with the rigid hierarchy of authority, task standardization, specialization, and lack of discretion which go with bureaucracy.

In Chapter III an effort was made to explore some of these theoretical incompatibilities from the perspective of the employed professional, his employer, and the licensing body by which the professional is regulated. Is the dual allegiance to his employer and to his profession irreconcilable? The answer must clearly be no. The professional employee's concerns are both economic and professional in nature. Like many others in our society, he feels the need or desire for more remuneration and may be frustrated by the ineffectiveness of his individual bargaining power to obtain that end. As well, the fact of his employment status may present him with problems because of lack

of recognition of his specialized training (i.e., in the lack of support for career development or scope for the exercise of discretion) or because of lack of status (i.e., performance of "non-professional" tasks or supervision by non-professionals). Most importantly, he may come into a position of conflict between an employer's orders and his profession's Code of Ethics.

Similarly, his employer may feel restricted by the unauthorized practice provisions that accompany the conferral on a profession of the exclusive right to practise. The regulatory body may experience problems in enforcing these rules against employers or in deciding whether to intervene between an employer and employee in an ethical dispute. It may also be concerned about the competence of employed professionals who subsequently move to self-employment status.

What solutions can be found for these and other problems? The following summarizes the recommendations which are set out in greater detail in Chapter IV of this paper:

(1) Collective bargaining should be available to salaried professionals, as there are no irreconcilable conflicts between unionization and professionalism. Therefore, the professional exclusions in the Ontario Labour Relations Act and the Crown Employees Collective Bargaining Act should be removed.

In addition, further changes are needed in the area of labour relations law to make collective bargaining for professional employees effective:

(a) The definition of "managerial functions" in the labour relations legislation, which can result in the exclusion of many professional employees from collective bargaining, should be altered. Some advance has been made through the flexible interpretation placed on the phrase in recent decisions by labour relations boards. However, many professional employees may still be excluded from the legislation, thus weakening their bargaining position. Professional employees should be excluded from bargaining units of professional employees only if they exercise supervisory authority over other professional employees and can affect the employment status of other professionals. Similarly, they should be excluded on the basis that they act in a confidential capacity in matters relating to labour relations only if it is in relation to the labour relations of professional employees.

(b) Professional employees should be allowed to organize in bargaining units composed only of professionals, unless they indicate through majority vote that they wish to be included in broader units. This assurance of sole profession or multi-profession units will protect the separate interests of the professionals, allowing them to deal with so-called "professional

issues", such as career development. The option of multi-professional units protects the employer against the costs associated with fragmentation of bargaining units, as well as ensuring some efficacy in bargaining power if there are only a few members from each profession in the workplace.

(c) The membership of the Labour Relations Board should include representatives of professional interests, and consideration should be given to the creation of a "professional" panel within the Board.

(d) The option as to whether professional employees should be allowed to strike should be left to the choice of the particular bargaining unit, as there is nothing inherently incompatible between the strike and professionalism.

(2) Despite the recommendation that collective bargaining should be available to professional employees, it should be recognized that many will not resort to the option. Individual bargaining will remain a major factor in determining the terms of professional employment. While interest groups can be effectively developed to aid individuals in their bargaining, the impetus for formation of such groups should come from the employees themselves rather than through legislation. In matters of economic interest, it is not compatible with the role of the regulatory body as protector of the public interest to promote

the economic self-interest of its members - whether the self-employed, through tariffs of fees, or the employed, through salary surveys.

(3) The salaried professional should continue to be subject to the licensing regime so long as he is practising his profession. The industrial exemption laws in use in parts of the United States in the regulation of the engineering profession fail to take into account the potential importance of the professional licence in the protection of the public interest, even in the employment context. The socialization that goes with professionalism, plus the threat of disciplinary action for unprofessional conduct, can lead the professional employee to exercise a checking function on the employer who may wish to act in a way detrimental to public health and safety. The market for the employer's product or the political checks on government do not provide sufficiently effective alternatives.

Furthermore, the licence serves a useful purpose to the responsible employer, both in terms of certifying initial competence and in protecting him against improper or incompetent service from his professional employees.

(4) The self-regulatory bodies should be concerned with the special concerns of their employed members:

(a) Consideration should be given to drafting ethical canons to meet their particular problems, as the APEO has done for employee engineers.

(b) Membership in the Registration Board of the OAA and in Convocation of the Law Society of Upper Canada should have a minimum number of representatives employed in corporations or government.

(c) The problem of continuing competence and recertification of competence when an employed professional moves to self-employment should be addressed as part of the broader problem of continuing competence of all members of the profession, for many private practitioners will become *de facto* specialists in the same way as their employed counterparts.

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ISBN 0-7743-3447-9